

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1117

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 24, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 85733). Claimant filed a timely request for hearing. On September 23, 2016, ALJ Shoemake conducted a hearing, and on September 27, 2016 issued Hearing Decision 16-UI-68147, affirming the Department's decision. On September 29, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Brandt Financial Services, Inc. employed claimant as assistant manager from July 1, 2011 to June 17, 2016.¹

(2) Claimant worked part-time, typically in four-hour shifts, and generally worked under 25 hours per week. She did not have a set schedule, but generally reported to work when the employer's president asked her to do so. The president was willing to modify claimant's work schedule to suit claimant's personal needs.

(3) In 2015, the president began making arrangements to sell her business. Several planned sales fell through, including one in February and one in May 2016. She notified claimant of her plans. Claimant understood that her employment would end when the business sold. The president planned to provide claimant with one month's notice when she sold the business.

(4) When claimant learned of the planned May 31, 2016 sale she began making plans. Claimant's post-sale plans included looking for other work and providing on-call care for her grandchildren during the summer while her daughter worked and her son-in-law worked and took online college courses.

(5) In mid-May 2016, claimant notified the president that she planned to end her employment on May 31, 2016. The president knew by that point that the May 31st sale would not take place and she would

¹ Claimant subsequently returned to work one six-hour shift for the employer on July 8, 2016, but that was a separate term of employment that was not adjudicated by the Department and is not at issue in this particular case.

need to remain in business. The president researched the start date of claimant's son-in-law's college courses, learned that they would not begin until June 20th, and asked claimant to keep working for the employer until June 17, 2016. Claimant agreed to do so.

(6) On June 17, 2016, claimant reported to work and worked two hours of her planned four-hour shift. The president authorized claimant to leave early because the business was slow and she knew claimant and her family were beginning a vacation after claimant's shift ended that involved a long drive. The president gave claimant her final paycheck and a bonus. Effective June 17, 2016, claimant left her job with the employer.

(7) The employer remained in business through September 30, 2016, at which time the sale of the business was to be completed.² The president had to reduce the business's hours when claimant left because she could not remain open the same number of hours each day without assistance, and could not hire or train a new employee when she anticipated closing the business.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause" is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

Claimant left work because she knew the employer's president was selling the business and she would need to find other work when that occurred. In anticipation of a May 31st sale, which ultimately did not occur, claimant developed plans to leave on May 31st to seek other work and to provide care on an as-needed basis for her grandchildren.

To the extent claimant quit work because the employer planned to sell the business, claimant did not show good cause for quitting work. By the time claimant notified the president of her plan to leave work on May 31st, the May 31st sale had fallen through and an indefinite amount of continuing work remained available to her. Claimant did not identify any other situation at work that prompted her to decide to leave work other than the sale of the business. Although living with the threat of the sale of the business, and, consequently, of losing her job might have been difficult, the president planned to give claimant a month's notice when the business sold, and the record did not otherwise show that a future sale of the business created a situation of such gravity that claimant had no reasonable alternative but to quit work, especially at a time that another sale had fallen through and no sale was pending.

² The hearing in this matter occurred 7 days prior to the anticipated sale date, and this record does not include information as to whether or not the sale actually occurred as planned.

To the extent claimant quit work because she needed to seek other work once the employer's business old, claimant also did not show good cause for quitting work. OAR 471-030-0038(5)(b)(A) provides, for purposes of determining good cause, that an individual who leaves suitable work to seek other work has left work without good cause. Claimant did not assert or show that her work for the employer was not suitable for her or that she had any impediments to continuing her employment based on the degree of risk to her health, safety or welfare, her prior experience and earnings, the length of her commute, or any other factor that goes to the suitability of the work. *See* ORS 657.190; ORS 657.195. Because the work was suitable, claimant did not have good cause to leave work to seek other work.

Finally, to the extent claimant quit work to care for her grandchildren, she did not show good cause for leaving. OAR 471-030-0038(5)(g) provides that good cause to leave work includes leaving work for compelling family reasons, and OAR 471-030-0038(1)(e) defines "compelling family reasons" to include caring for dependent children under some circumstances. However, the circumstances that amount to good cause are limited to "illness or disability [that] necessitates care by another and the individual's employer does not accommodate the employee's request for time off." OAR 471-030-0038(1)(e)(B). Claimant did not leave to care for ill or disabled grandchildren, but instead to spend time with them while their parents worked or took online college courses. Even if she had, given that claimant's work schedule was flexible and the record established the president's willingness to consider or accommodate claimant's scheduling needs, the record fails to show that the employer would have been unwilling to accommodate claimant's request(s) for time off to care for them.

Each of those reasons, considered individually or as a whole, fails to amount to good cause for quitting work. We therefore conclude that claimant quit work without good cause. Claimant is disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 16-UI-68147 is affirmed.

Susan Rossiter and D. P. Hettle;
J. S. Cromwell, not participating.

DATE of Service: October 19, 2016

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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