

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1283

Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 14, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 122251). The employer filed a timely request for hearing. On October 27, 2016, ALJ McGorin conducted a hearing at which claimant failed to appear, and issued Hearing Decision 16-UI-70078, affirming the Department's decision allowing unemployment benefits. On November 15, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted written argument to EAB, but failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider the employer's written argument when reaching this decision.

FINDINGS OF FACT: (1) O'Reilly Auto Parts employed claimant, last as a store manager, from November 5, 2012 through July 15, 2016. Claimant worked at an employer location in Bend, Oregon. Claimant lived in Bend.

(2) As a store manager, the employer expected claimant to open the store she managed and to work, at minimum, from 7:00 a.m. to 5:00 p.m., Monday through Friday, or Tuesday through Saturday. Sometimes managers were required to arrive before 7:00 a.m.

(3) In May 2016, claimant began a family medical leave of absence related to the adoption of a child.

(4) On July 14, 2016, claimant told the employer's district manager by telephone that she was unable to work a manager's schedule because she did not have daycare that met Oregon Department of Human Services' (DHS) guidelines that would enable her to work the minimum required hours the employer required for a manager. The available DHS-approved daycare did not begin early enough for claimant to drop off her child before she was required to report to work. Claimant told the district manager that her available childcare would permit her to work a position, including a non-managerial position, from

8:00 a.m. to 4:00 p.m., Monday through Friday. The employer rarely had positions open that would permit claimant to work those hours.

(5) The district manager investigated all possible options for another position for claimant. On July 15, 2016, the district manager called claimant and told her that there were two other open positions, in the employer's Redmond location. Redmond is located approximately 20 miles from Bend, Oregon. Both positions would have required claimant to work evening and weekend hours. The Redmond store was open until 8:00 p.m. Claimant told the district manager that she was unsure if she could arrange childcare for those schedules.

(6) Later on July 15, 2016, claimant sent a text message to a sales representative stating that she quit due to lack of childcare.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ and conclude that claimant voluntarily left work with 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 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 quit work because she was not able to find suitable childcare that permitted her to work the schedules for any of the employer's open positions. Moreover, claimant had already used family medical leave since May 2016, and the employer rarely had positions open that were compatible with the hours when claimant had childcare available. Thus, there is no reason to believe extending her leave would have been an option for claimant or would have enabled claimant to find other suitable childcare that had hours that would permit her to continue working for the employer. The preponderance of the evidence shows that claimant made every reasonable effort to find a DHS-approved child care provider with business hours that would accommodate any of the work schedules offered by the employer. No reasonable and prudent auto parts store employee of normal sensitivity, exercising ordinary common sense, would continue working when she lacked DHS-approved child care for her child for all the hours the employer required her to work.

Claimant voluntarily left work with good cause. She is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 16-UI-70078 is affirmed.

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

DATE of Service: December 9, 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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