

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1300

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 6, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 90605). The employer filed a timely request for hearing. On October 24, 2016, ALJ Wyatt conducted a hearing, and on November 2, 2016 issued Hearing Decision 16-UI-70435, concluding that claimant quit working for the employer without good cause. On November 16, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Kai USA LTD employed claimant as a packaging supervisor from June 18, 2012 to July 1, 2016.

(2) Claimant lived in Beaverton, Oregon and worked full time for the employer, Mondays through Fridays. On Saturdays claimant typically visited her mother, who was terminally ill with cancer, and cared for in a retirement home in Southeast Portland, Oregon. However, the employer sometimes required claimant to work Saturdays, especially in summer, which interfered with claimant's ability to visit her mother on those days.

(3) On June 17, 2016, claimant asked her manager if she could be excused from working on Saturdays. Her manager denied the request. Claimant did not raise the issue with the employer's human resources generalist, who had assisted claimant in receiving time off from work due to claimant's and her mother's health issues, and to move her mother into the retirement home. Instead, claimant notified her manager and the human resources generalist in writing that she needed to find other employment, that with all the overtime in the summer months she could not make it work, and that her last day of work would be set by her manager because time was needed to train her replacement. After notifying the employer, claimant sent her manager an email suggesting that she instead should have requested a transfer to another department that did not require her to work Saturdays. Claimant's manager told her that she probably could transfer, but she would make significantly less money. Claimant did not request a transfer.

(4) The human resources generalist discussed the situation with claimant's manager, who stated that, ideally, claimant should work on all Saturdays on which her work crew was scheduled to work, but not that it was absolutely necessary. The manager also told the human resources generalist that claimant had considered requesting a transfer instead of quitting, but decided not to.

(5) Claimant expected it to take two to three months for her manager to train her replacement. However, claimant's manager decided to promote a lead worker to claimant's position, and determined that it would take only two weeks to train the lead worker. The employer therefore notified claimant that her last day of work would be July 1, 2016.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant quit working for the employer without good cause.

The first issue in this case is whether claimant voluntarily left work or was discharged. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). The date an individual is separated from work is the date the employer-employee relationship is severed. *Id.*

At hearing, claimant argued that she was discharged because she was willing to continue working for the employer after July 1, 2016, but was not allowed to so by the employer. Audio Record at 20:00. However, claimant moved to sever the employment relationship by notifying the employer on June 17, 2016 that she needed to find other employment, and authorizing the employer to determine her last day of work. Had she not done so, she could have continued to work for the employer indefinitely. Because claimant could have continued to work for the employer for an additional period of time, the work separation therefore is a voluntary leaving, and not a discharge.

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 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. Leaving work with good cause includes leaving work due to compelling family reasons, including the illness or disability of a parent necessitating care by another and the individual's employer does not accommodate the employee's request for time off. OAR 471-030-0038(5)(g), OAR 471-030-0038(1)(e)(B), OAR 471-030-0038(1)(f).

In the present case, claimant quit work because her manager denied her request to be excused from working some Saturdays, which interfered with claimant's ability to visit her terminally ill mother on those days. However, claimant did not quit work due to "compelling family reasons" because she did not quit work to care for her mother, who was cared for in a retirement home. Nor do we find

claimant's inability to visit her mother every Saturday of such gravity that she had no reasonable alternative but to quit work, especially without allowing the employer's human resources generalist a reasonable opportunity to resolve the situation to claimant's satisfaction, which the record fails to show likely would have been futile.

We therefore agree with the ALJ that claimant quit work without good cause. Claimant is disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 16-UI-70435 is affirmed.

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

DATE of Service: December 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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