

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1319

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 3, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 72448). Claimant filed a timely request for hearing. On October 31, 2016, ALJ Yee conducted a hearing at which the employer did not appear, and on November 7, 2016 issued Hearing Decision 16-UI-70696, affirming the Department's decision. On November 26, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Douglas G. Peterson Investments, Inc. employed claimant as a convenience store clerk from July 8, 2014 until August 16, 2016.

(2) Sometime around March 2016, claimant called in sick to work. Afterward, claimant's weekly hours were cut from 32 hours per week to 17 to 22 hours per week. Sometime in approximately May 2016, claimant's weekly hours were restored to 32 hours.

(3) Sometime before July 2016, claimant's grandmother entered a nursing home because she had dementia and could no longer be cared for at home. The grandmother had a difficult time adjusting to the nursing home, and resisted being in it. Claimant's family decided that it might ease the grandmother's transition to the nursing home if some family members took her on outings each week, such as to lunch or to visit the zoo. The family decided Saturday would be an appropriate day for those outings. The family decided they would begin these outings on the third weekend in July and would continue them through the month of August 2016 and, at that time, evaluate whether the outings were facilitating the grandmother's transition and, if not, to stop making them. Claimant did not have a car and was only able to visit the grandmother if another family member gave him ride to the nursing home. Claimant wanted to participate with his father in taking his grandmother on the planned outings.

(4) Sometime during the week after July 4, 2016, claimant asked his manager if he could have Fridays and Saturdays off from work beginning on Friday, July 22, 2016 and continuing through Saturday, August 27, 2016. Claimant explained that he wanted those Fridays off to help his father restore a car and those Saturdays off to participate in taking his grandmother on outings away from the nursing home. Claimant understood the manager to tell him he would have those days off. During that conversation, claimant also understood that his hours had been cut in March 2016 because the employer had been displeased about him calling in sick during March. Shortly after learning the reason his hours had been cut, claimant contacted the Bureau of Labor and Industries (BOLI) about filing a complaint against the employer even though his hours had by that time been restored to their previous level.

(5) Claimant had Friday, July 22 and Saturday, July 23, 2016 off from work. The next weekend, Friday, July 29 and Saturday, July 30, 2016, claimant was scheduled to work. The next weekend, Friday, August 5 and Saturday, August 6, 2016, claimant was scheduled to work. When claimant saw he was scheduled to work those days, he talked with his manager. Claimant told his manager that he had filed a complaint with BOLI about his hours being cut in March 2016. The manager told claimant for the second time he would try to give him the Fridays and Saturdays he wanted off. Audio at ~39:21. In claimant's presence, the manager called the assistant manager responsible for scheduling to have claimant removed from working on Fridays and Saturdays. The assistant manager told the manager that she had to talk with the owner about whether claimant would be allowed to have Fridays and Saturdays off. Claimant was not removed from the work schedule for Friday, August 12 and Saturday, August 13, 2016. When claimant saw on August 12, 2016 that he was scheduled to work on Friday, August 19 and Saturday, August 20, 2016, he became very angry and "acted out." Audio at ~45:00. When claimant spoke to a coworker about the schedule, he called the assistant manager a foul name. Audio at ~46:44, ~47:36. The coworker told the assistant manager of the name claimant had called her.

(6) After July 23, 2016, claimant called in sick on some of the Saturdays on which he was scheduled to work. Claimant did so to have these days off and to allow him to participate with his father in the family outings with his grandmother.

(7) On Tuesday, August 16, 2016, the owner met with claimant. The owner told claimant he was displeased with claimant's angry behavior over the past weekend and that he had called the assistant manager a foul name. Claimant told the owner he had been angry because he needed Saturdays off to allow him to participate in the outings with his grandmother. Claimant told the owner he was willing to work on Fridays, but not on Saturdays. The owner told claimant he could "not guarantee" that claimant would have the Saturdays off that he wanted. Audio at ~31:16, ~52:44. Claimant quit work effective immediately because the employer was unwilling to commit to giving him Saturdays off.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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 his employer for an additional period of time.

Claimant contended that he quit work when he did because he was upset that the owner would not commit to giving him Saturdays off through the end of August 2016, and he because he suspected that the owner was retaliating against him for contacting BOLI about the reduction in his hours in March and April 2016. Audio at ~18:04, ~22:15, ~31:16, ~52:44. With respect to having Saturdays off through August 2016 to participate with his father in taking his grandmother on outings away from the nursing home, claimant did not show that this was a grave reason for him to leave work. At the time claimant left work, there were only two Saturdays remaining during the period of time that claimant's family intended to take the grandmother on outings. Claimant did not present evidence demonstrating that these two outings would not occur if he was unable to attend them or that some objectively grave harm would befall his grandmother or him if he was not present during the outings. Claimant also did not show that he was reasonably unable to visit his grandmother other than on the Saturdays he wanted off. While claimant's desire to participate in the family outings with his grandmother and show his affection for her was laudable, he did not demonstrate the presence of factors that made his possible lack of attendance during the remaining two outings a grave circumstance. With respect to the owner's unwillingness to guarantee that claimant could have the remaining two Saturdays off for the outings, and whether it was due to claimant's complaint to BOLI, claimant presented only speculation to support his belief that the owner was retaliating against claimant for that reason. Claimant did not meet his burden to demonstrate that the owner's unwillingness to commit to giving claimant two Saturdays off was anything other than a good faith exercise of legitimate business judgment.

Claimant did not show good cause for leaving work when he did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-70696 is affirmed.

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

DATE of Service: December 14, 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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