

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1323

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 11, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision 140802). Claimant filed a timely request for hearing. On November 4, 2016, ALJ S. Lee conducted a hearing, and on November 10, 2016 issued Hearing Decision 16-UI-71021, affirming the Department's decision. On November 28, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was based on information received into evidence at the hearing. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

FINDINGS OF FACT: (1) Asante employed claimant as a customer service representative from March 2, 2015 until September 9, 2016. During claimant's employment, she and her husband lived in the vicinity of Medford, Oregon and the workplace was located in Medford.

(2) Beginning in approximately 2013, claimant's adult daughter lived in Scotland. The daughter's husband was a citizen of Scotland. Sometime before September 2016, claimant's daughter and her husband decided to move to the United States.

(3) Claimant's daughter and her husband decided they would live in Nevada after their move to the United States. They did not have significant resources. The daughter wanted to attend college at the University of Nevada Las Vegas. The daughter's husband thought there would be significant job opportunities in Nevada in the field of information technology, in which he had work experience. The husband also had a back injury, and he and the daughter thought the warm climate in Nevada would benefit him. Claimant and her husband agreed to financially sponsor their daughter's husband when he applied to immigrate to the United States.

(4) Sometime before September 7, 2016, claimant's daughter came to the United States to begin the immigration process for her husband along with claimant and her husband. The husband stayed in Scotland. Claimant and her husband decided it would be too expensive to financially support a household in Nevada for their daughter and her husband while maintaining their own residence in Oregon, and they decided to move to Nevada to be with their daughter and her husband. Claimant and her daughter secured a residence for claimant and her husband and the daughter and the son-in-law in Henderson, Nevada.

(5) Sometime before September 7, 2016, claimant and her husband completed the Department of Homeland Security's USCIS Form I-864 and Form I-864A to sponsor the immigration of the daughter's husband. Those forms were a contract between the sponsor (claimant's husband) and a household member (claimant) in which claimant and her husband agreed to assume responsibility for the financial support of the daughter's husband as required by section 213A(a)(1)(A) of the Immigration and Naturalization Act (8 USC §1183a), and an affidavit of support for the daughter's husband under that statutory provision. Claimant understood that the daughter's husband needed to have an established address in the United States before entering, and would need to remain at that address for at least the first four months he was in the United States.

(6) On September 7, 2016, claimant notified the employer that she was leaving work on September 9, 2016 because she was an immigration sponsor for her daughter's husband and needed to relocate to Nevada. Subsequently, claimant and her daughter moved to the residence they had secured in Henderson, Nevada. Claimant and her husband rented their home in Oregon. Claimant's husband remained temporarily in Oregon. Claimant's daughter intends to start school at UNLV in spring 2017.

(7) When claimant left work on September 9, 2016, continuing work was available for her.

CONCLUSIONS AND REASONS: 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.

While claimant initially contended that she understood that as a financial sponsor for the immigration of her daughter's husband, he needed to live in a household that she and her husband established, that is not supported by the language of Form 1864 or 1864A. Audio at ~8:59, ~10:09, ~12:45, ~13:05; Exhibit 1 at 2-10. Nor does the Immigration and Naturalization Act, 8 USC §1183a or its enabling regulation, 8 CFR §213A, require that the sponsored immigrant reside with the sponsor, but only that the sponsor remain financially responsible for the immigrant for a period of time. Claimant later appeared to retreat from the position that the daughter's husband was required to live in her household, and stated that she

and her husband moved to Nevada because that was where the daughter and her husband wanted to live in the United States, and claimant and her husband did not have the financial resources to support them in a separate household in Nevada while she and her husband remained in Oregon. Audio at ~ 13:54, ~21:08.

Claimant did not present any evidence showing that objectively grave reasons necessitated that the daughter and her husband not live in the vicinity of claimant's residence in Medford, Oregon. While the daughter's husband might have preferred the climate in Nevada for his back, he was living prior to his immigration in Glasgow, Scotland, which is not known as a particularly warm geographic location. Claimant did not contend that health reasons or the climate in Scotland motivated the daughter's husband to immigrate to the United States or present facts showing that something about living in Medford would have had grave consequences for the health of the daughter's husband. While the daughter's husband might have considered his employment prospects to be better in Nevada than in Oregon, claimant did not present any evidence suggesting or tending to suggest that he would not be able to locate suitable employment in the vicinity of Medford, Oregon. Similarly while the daughter may have desired to attend school at UNLV if she ended up in Nevada, claimant presented no evidence showing that such educational opportunities were not present in the vicinity of Medford, or that some grave detriment would befall the daughter if she did not attend UNLV. On this record, it appears that the daughter and the daughter's husband preferred for personal reasons to live in the area around Henderson, Nevada rather than in Medford after he immigrated, and claimant and her husband were willing to move to Nevada to enable them to afford to provide financial support to the daughter and her husband while they established themselves in Nevada. Although claimant's reasons for quitting to be near her daughter in her desired location of Nevada were understandable, those reasons were not supported by objective gravity. Accordingly, claimant did not show good cause for leaving work when she did.

Claimant did not meet her burden to show that objectively grave reasons caused her to leave work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-71021 is affirmed.

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

DATE of Service: December 20, 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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