

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1359

Affirmed
No Disqualification

PROCEDURAL HISTORY: On October 19, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 131617). Claimant filed a timely request for hearing. On November 16, 2016, ALJ Kangas conducted a hearing, and on November 17, 2016 issued Hearing Decision 16-UI-71343, concluding that claimant quit work with good cause. On December 1, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer's written argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond the employer's reasonable control prevented it from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Bank of the Cascades employed claimant as a relationship banker from March 7 to September 9, 2016.

(2) In late April 2016, the employer required claimant to submit to a criminal background check, which was necessary for claimant to receive his "NMLS" (National Mortgage Licensing System) certification, which would allow him to discuss mortgages and home equity loans with customers. Transcript at 6. In late May 2016, the employer received the results of the criminal background check. In June 2016, the employer informed claimant that, based on the criminal background check, claimant needed to provide additional paperwork to finalize his NMLS registration. However, claimant was not told, and did not know, what additional paperwork was needed.

(3) In July 2016, the employer again informed claimant that he needed to provide additional paperwork to finalize his NMLS registration. The employer informed claimant that he needed to provide military service records, but claimant was not told, and did not know, what military service records he needed to provide. On July 18, 2016, claimant informed the employer he would contact the NMLS resource center to determine what was needed. Claimant contacted the NMLS resource center, but still was not told

what military service records the employer wanted him to provide. In early August 2016, claimant was told what military service records were needed. On August 11, 2016, claimant informed the employer that he did not know how to obtain those records, but that a former employer had somehow obtained them, and that he would figure out how it did so.

(4) Claimant contacted his former employer several time over the next several days, and on August 18, 2016 was told how to obtain his military service records. That same day, claimant's manager told claimant that if he did not provide his military service records by August 31, 2016, he would be discharged. On August 18 or 19, 2016, claimant requested his military service records, and was told he would receive them in approximately 90 days. Claimant forwarded that information to his manager, who advised claimant to prepare for unemployment, start looking for other jobs, cancel childcare for claimant's three children, all of whom were under five years old, and start filing for unemployment insurance benefits.

(5) From August 22 through 26, 2016, claimant and his manager repeatedly asked the employer to extend the deadline for providing his military service records, but the employer refused. On August 26, 2016, claimant was told that his last day of work would be August 31, 2016. Later that day, claimant canceled childcare for his three children after Friday, September 2, 2016 because he would not be able to afford child care after being discharged, and could care for his children himself when unemployed.

(6) On August 30, 2016, the employer informed claimant that he did not need to provide his military service records, and would be allowed to continue working for the employer after August 31, 2016. Claimant attempted to re-hire his former child care provider, but she was no longer available. On August 31, 2016, claimant asked his manager for a leave of absence until he found another childcare provider. Claimant's manager told him that he could not grant claimant's request, and that the employer would discharge claimant rather than grant such a request. Claimant therefore did not formally request a leave of absence.

(7) Claimant's cousin was available to care for claimant's children, but only from Monday, September 5 through Friday, September 9, 2016. Claimant attempted to find a new child care provider, but could not find one for his youngest child. Claimant found a child care provider for his two older children, but did not have the money to pay for child care in advance, as required. On September 9, 2016, claimant quit work due to a lack of child care.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant quit working for the employer with 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. Where the gravity of the situation experienced by an individual results from his own deliberate

actions, to determine whether good cause exists, the actions of the individual in creating the grave situation must be examined in accordance with the provisions of OAR 471-030-0038(4). OAR 471-030-0038(5)(f).

Claimant quit work due to a lack of childcare for his three children, all of whom were under five years old. Claimant had no reasonable alternative but to quit work for that reason given that he was unable to find a child care provider for his youngest child, and did not have the money to pay a child care provider in advance for his two older children, as required. The issue is whether claimant nevertheless should be disqualified from receiving benefits under OAR 471-030-0038(5)(f), i.e., whether the gravity of his situation resulted from his own deliberate actions, and whether he had good cause to take those actions. With respect to claimant's failure to request his military service records prior to mid-August 2016, claimant requested those records as soon as he knew what records were needed and how to obtain them. His failure to request the records earlier therefore was not a deliberate act. With respect to claimant's August 26, 2016 cancellation of child care for his children after September 2, 2016, claimant had no reasonable alternative but to do so after being told that he would be discharged on August 31, 2016, after which he would not be able to afford child care, and could care for his children himself. Claimant therefore had good cause to cancel his childcare.

On August 30, 2016, the employer informed claimant that he did not need to provide his military service records, and would be allowed to continue working for the employer after August 31, 2016. With respect to claimant's failure to formally request a leave of absence until he find another child care provider, claimant's manager told him that he could not grant claimant's request, and that the employer would discharge claimant rather than grant such a request. Thus, even if claimant's failure to formally request a leave of absence could be considered a deliberate act, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have concluded that a leave of absence was not an option, and that requesting a leave of absence therefore would have been futile. Claimant therefore had good cause not to formally request a leave of absence, and is not disqualified from receiving benefits under OAR 471-030-0038(5)(f).

Claimant quit work with good cause. He is not disqualified from receiving benefits based on his work separation from the employer.

DECISION: Hearing Decision 16-UI-71343 is affirmed.

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

DATE of Service: January 10, 2017

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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