

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1361

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 12, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 94822). Claimant filed a timely request for hearing. On November 15, 2016, ALJ Wyatt conducted a hearing, and on November 17, 2016 issued Hearing Decision 16-UI-71301, concluding claimant voluntarily left work without good cause. On December 5, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Community Vision, Inc. employed claimant as a support companion from July 23, 2012 until September 21, 2016.

(2) Claimant worked for an intellectually disabled individual in the individual's home providing support and caregiving services on Mondays through Thursdays from 3:00 p.m. until 11:00 p.m. Several other caregivers also worked for the individual in his home. The individual had an eight year-old dog as a pet. The individual's ability to process information, reason, regulate emotions and communicate was impaired as a result of his disability.

(3) Sometime before August 2016, claimant became concerned about the health of the individual's dog. In August 2016, claimant contacted her direct supervisor and other supervisors detailing her concerns about the dog and questioning the treatment the dog was receiving from his regular veterinarian. During this time, the supported individual was "very upset" and told claimant's direct supervisor, who also was one of his support companions, that he felt "very pressured" by claimant to take his dog to a different veterinarian for treatment. Transcript at 18. Claimant's behavior and its impact on the supported individual were reported to the employer's management.

(4) On August 28, 2016, the director of support programs met with claimant and told her that her principal focus should be more on providing care and support to the supported individual and less on the health of the individual's dog. The director told claimant that none of the supported individual's other

caregivers thought the dog was not receiving proper veterinary care or needed different treatment. The director also told claimant that she should stop trying to persuade the supported individual to seek different care for the dog, and that the employer's policies prohibited her from attempting to influence the opinions or views of a supported individual. Exhibit 1 at 4.

(5) On Thursday, September 1, 2016, claimant reported for work and thought the supported individual's dog was having difficulty breathing. Claimant contacted her direct supervisor, other supervisors and the employer's executive director by voice or text message stating that she thought the dog needed to be taken immediately to a veterinarian and that her husband would be available to transport them. Exhibit 2 at 18. The executive director told claimant that she needed to seek permission from her direct supervisor to take the dog to a veterinarian. Exhibit 2 at 7. Claimant continued trying to reach a supervisor. Claimant's husband arrived at the supported individual's home. Sometime later, another supervisor came to the supported individual's home and told claimant that she was to take the night off and her direct supervisor would handle her shift. Claimant did so and she and her husband left without taking the dog to a veterinarian.

(6) Around September 2, 2016, claimant showed videos she had taken of the supported individual's dog to an emergency veterinary technician at Dove Lewis Emergency Hospital. The technician told claimant the dog appeared to need treatment by a veterinarian. Exhibit 2 at 21. Around this time, claimant also contacted People for the Ethical Treatment of Animals (PETA) to initiate an investigation into the dog's condition and treatment. PETA referred claimant to the Oregon Humane Society (OHS) and claimant contacted OHS. On September 2, 2016, when claimant was off from work, she sent an email to the employer's executive director about the dog. In the email claimant acknowledged that, although no other staff at the supported individual's home thought the dog needed immediate treatment, she did and asked for permission to take the dog to a veterinarian. Exhibit 2 at 21

(7) On Monday, September 5, 2015, claimant reported for work and thought the dog needed to be examined by a veterinarian. On that day, claimant took the supported individual and the dog to an emergency animal hospital without a supervisor's permission. Exhibit 2 at 18. Claimant spoke briefly with her direct supervisor from the animal hospital, and when he learned that claimant was at the hospital, he asked her if her call was about the dog. Transcript at 38. When claimant stated it was, the supervisor told her he "did not want to discuss it" and terminated the call. Transcript at 38. Claimant then sent a text message to the executive director, who replied that he had been told by other staff that the dog was fine all weekend. Exhibit 2 at 10. The executive director also sent claimant a message telling her that the dog's regular veterinarian had been contacted that day for a follow-up on the dog's condition and asking her who was going to assume financial responsibility for the visit to the emergency veterinary hospital. Exhibit 2 at 15.

(8) On September 6, 2016, the employer concluded that claimant was overly concerned with the welfare of the supported individual's dog, unnecessarily expressing disagreement with the care that the dog was receiving from his regular veterinarian and upsetting the supported individual. On September 6, 2016, the employer's director of human resources spoke with claimant and told her that, effective immediately, she was transferred from working with the supported individual with the dog to another supported individual. The director of human resources told claimant that in the new position, she would make the same hourly wage and would be working Mondays through Thursdays from 3:30 p.m. to 9:30 p.m., or

three hours less per shift or twelve hours less per week. Although claimant told the director she would call her the next day to state if she was willing to accept the reassignment, she did not do so.

(9) On September 8, 2016, claimant sent an email to the employer's executive director, stating her concerns about the supported individual's dog and that she would "seriously consider" accepting the employer's transfer of her to a different position. Exhibit 2 at 1.

(10) On September 15, 2016, the director of human resources left claimant a voicemail message asking her to call about whether she wanted the reassigned position. On September 15, 2016, the director sent claimant an email repeating the voicemail message, telling claimant she had until September 21, 2016 to accept the reassignment and, if she did not respond, the employer would consider it a refusal to accept the reassignment and a job resignation. Exhibit 1 at 4. Claimant did not respond to either the voicemail or the email.

(11) On September 21, 2016, the director of human resources sent claimant an email telling her that she needed to respond by the end of the day and if she did not the employer would consider her to have resigned from her position. That day, claimant called the director of human resources and told her she was "looking forward to talking to [her] at the adjudication process." Transcript at 7. Claimant said nothing about accepting the reassignment. The director of human resources concluded that, by her response, claimant was unwilling to accept the new position and was quitting work. On September 21, 2016, claimant voluntarily left work.

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 briefly commented during her testimony that the job to which the employer told her on September 6, 2016 that she was going to be reassigned did not pay a "living wage," when she was asked why she turned down the reassignment and resigned, the focus of her testimony was on how the supported person's dog was treated and that she "didn't want to look the other way" and jeopardize the dog's health. Transcript at 35, 36. Notably, claimant did not raise the issue of the new position's pay with the executive director or the director of human resources when she was communicating with them about the reassignment. Exhibit 2 at 1; Transcript at 7, 8. As subsidiary matter, claimant also contended that she thought the employer had mistreated her by the manner in which it discounted her concerns about the health of the dog. Transcript at 36, 37. Based on claimant's testimony, the dog's alleged need for treatment and the employer's reactions to her efforts to arrange for that treatment were likely the reasons that claimant left work and her decision to quit was not based on the nature or rate of pay of the position to which the employer proposed to reassign her.

Although claimant may have disagreed with the regular veterinarian's treatment of the dog, claimant did not present any evidence showing that it was inadequate, that the employer's staff was not appropriately following up with the regular veterinarian's treatment of the dog or that the veterinarian at the emergency animal hospital, any other veterinary professional or PETA or OHS recommended that the dog receive different treatment than it was receiving. *See* Exhibit 2 at 3-4, 17. Aside from this lack of evidence, claimant also did not show how, after she had contacted PETA or OHS to initiate an investigation into how the dog was being treated, her resignation from work in protest of the dog's treatment improved the welfare of the dog. Transcript at 36. Further, claimant also did not show that any harm was caused to her or the dog from the employer's pursuing treatment of the dog through its regular veterinarian rather than through the veterinarians that claimant might have chosen. On these facts, claimant presented insufficient evidence to show that the dog's veterinary treatment constituted a grave reason for her to leave work when she left work.

In addition, while claimant contended that her direct supervisor "hung up" on her when she tried to discuss her continued concerns about the dog after she had done so on several occasions before with him, she did not dispute that the supervisor actually told her he did not want to discuss further her opinions about the dog before he terminated the call and that executive director and other supervisors had responded to her contacts with them about the dog. Transcript at 33, 36-37, 38. Nothing about the manner in which claimant described what the supervisors stated to her or how they behaved suggested or tended to suggest that they were acting abusively to her. Rather, the evidence demonstrates that the employer spoke with other staff about the dog's condition and obtained a written statement from the dog's regular veterinarian about his course of treatment for the dog, and the employer's supervisors did not want to continue to listen to claimant's contrary views. Exhibit 1 at 4, Exhibit 2 at 1, 11, 15, 18, 19, 21. As well, that the employer decided to accept the observations of other staff and the dog's regular veterinarian about the dog's need for treatment or follow-up in preference to the views espoused by claimant was not, on these facts, a grave reason for claimant to leave work. A reasonable and prudent person, who was not a veterinarian or trained in animal care, would not have concluded that a consensus opinion of other staff about the dog's treatment that was joined in by the dog's regular veterinarian was a grave reason to leave work if she disagreed with it.

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

DECISION: Hearing Decision 16-UI-71301 is affirmed.

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

DATE of Service: January 13, 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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