

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0122

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 14, 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 # 71717). Claimant filed a timely request for hearing. On January 18, 2017, ALJ Kangas conducted a hearing at which the employer did not appear, and on January 19, 2017 issued Hearing Decision 17-UI-74960, affirming the Department's decision. On January 30, 2017, claimant filed a timely application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) ADP Totalsource IV Inc. employed claimant until July 1, 2016.

(2) Prior to March 1, 2016, claimant rented a house with her husband and worked for the employer in Eugene, Oregon. Claimant's husband also worked for his employer in Oregon. As of March 1, 2016, however, his employer assigned him to work in the state of Washington. Claimant initially remained in Eugene, where her husband could only visit her on some weekends. In April 2016, claimant and her husband began discussing the possibility of moving to Washington.

(3) On June 1, 2016, claimant's landlords informed her that they were going to sell the rental house. Claimant and her husband decided to move to Washington, and wanted to complete the move before their landlords sold the house, so that claimant did not have to attempt to find short-term housing in Eugene. Claimant's husband wanted to complete the move to Washington no later than August 1, 2016.

(4) Due to the nature of claimant's husband's work, he was not available to help claimant search for housing in Washington, which therefore was claimant's sole responsibility. Claimant determined that it was not feasible for her to work for the employer in Eugene while searching for housing in Washington. In early June 2016, claimant notified the employer she was quitting work, effective July 1, 2016.

(5) Claimant quit work on July 1, 2016 to search for housing in Washington. On August 1, 2016, claimant found housing in McCleary, Washington, where she and her husband moved on August 15, 2016.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant quit work with 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). Leaving work with good cause includes leaving work due to compelling family reasons, including the need to accompany the individual's spouse to a place from which it is impractical for such individual to commute due to a change in location of the spouse's employment. OAR 471-030-0038(5) (g) (August 3, 2011), OAR 471-030-0038(1)(e)(C). Otherwise, "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). To establish good cause under OAR 471-030-0038(4), a claimant must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

In Hearing Decision 17-UI-74960, the ALJ concluded that claimant quit work without good cause under OAR 471-030-0038(4) because she quit work over six weeks before moving to Washington and did not discuss with the employer alternatives to quitting that would have let her continue working closer to the time of her moving or until she no longer had housing in Eugene.¹ However, claimant left work because of the need to accompany her spouse to Washington, a place from which it was impractical for her to commute, due to a change in location of her spouse's employment from Oregon to Washington. Claimant therefore quit work due to compelling family reasons, as defined under OAR 471-030-0038(1)(e)(C), and good cause under OAR 471-030-0038(5) (g).

Even if we examined timing of claimant's voluntary leaving for work under OAR 471-030-0038(4), the outcome would remain the same. In addition to claimant's compelling family reasons for leaving work, her landlords were going to sell the house she rented in Eugene, and her husband was unable to help her search for housing in Washington, which therefore was claimant's sole responsibility. Claimant determined that it was not feasible for her to work for the employer in Eugene while searching for housing in Washington, and testified that given the nature of her work and the needs of the employer, it was not feasible for the employer to allow her time off to search for housing in Washington. Audio Record at 15:30. Absent evidence to the contrary, and given the fact that it took claimant over six weeks to find housing and move to Washington, the record shows that claimant had no reasonable alternative but to quit when she did.

Claimant therefore quit work with good cause, and is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 17-UI-74960 is set aside, as outlined above.

¹ Hearing Decision 17-UI-74960 at 2-3.

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

DATE of Service: February 14, 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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