

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0229

Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 18, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left without good cause (decision # 123945). Claimant filed a timely request for hearing. On February 15, 2017, ALJ Frank conducted a hearing, and on February 22, 2017, issued Hearing Decision 17-UI-77449, concluding claimant voluntarily left work with good cause. On February 27, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Lincoln County School District employed claimant as a special education assistant from September 8, 2007 through September 28, 2016.

(2) Claimant's adult daughter was pregnant with her second child and due to give birth on October 16, 2016 in southern California. Claimant's daughter gave birth to her first child by Cesarean section and it was anticipated that the upcoming birth also would be by Cesarean section. Claimant's daughter requested claimant's help to prepare for and recover from the upcoming birth and to care for claimant's granddaughter. Claimant's daughter's spouse typically worked out of town and was unable to take leave himself.

(3) Claimant determined that she needed to take time off work and travel to California to both assist her daughter before and after the birth and to provide care for her granddaughter. She contacted the employer's human resources office and requested a temporary leave for that purpose. The employer informed her that she did not qualify for any type of leave under existing law or their policies. Given the circumstances, claimant tendered the employer notice of her resignation.

(4) Claimant worked until September 28, 2016 as agreed and resigned. She then traveled to California and helped care for her daughter and grandchildren.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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.

For purposes of applying OAR 471-030-0038(4), OAR 471-030-0038(5)(g) provides that “[l]eaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons.” “Compelling family reasons” includes, in pertinent part, when “the illness or disability of a member of the individual’s immediate family necessitates care by another and the individual’s employer does not accommodate the employee’s request for time off.” OAR 471-030-0038(1)(e)(B). “[A] member of the individual’s immediate family” includes spouses, domestic partners, parents and minor children under the age of 18, including a foster child, stepchild or adopted child. OAR 471-030-0038(1)(f).

We agree with the ALJ that the provisions of OAR 471-030-0038(5)(g) do not apply to this case because they apply only to a need for care for immediate family members including “minor” children of one’s own. Because claimant quit work to care for an adult child and granddaughter, claimant did not leave work due to “compelling family reasons” under that administrative rule and her resignation must be adjudicated under the standard good cause provision set forth in OAR 471-030-0038(4).

We conclude that claimant’s circumstances were sufficiently grave under OAR 471-030-0038(4) to constitute good cause for leaving work when she did. Her daughter was in the late stage of a pregnancy and it may be inferred that a Cesarean section was likely. Her daughter was already caring for a small child, claimant’s granddaughter, and it was likely she would be without the assistance of her spouse. Claimant requested multiple forms of leave from her employer to accommodate her circumstances, but was denied each one. Viewed objectively, a reasonable and prudent person of normal sensitivity, exercising ordinary common sense in claimant’s circumstances, would have concluded that she had no reasonable alternative but to leave work when she did.

Claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

DECISION: Hearing Decision 17-UI-77449 is affirmed.

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

DATE of Service: March 22, 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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