

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0312

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 23, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision #150359). The employer filed a timely request for hearing. On February 16, 2017, ALJ Linda Lohr conducted a hearing, and on February 22, 2017, issued Hearing Decision 17-UI-77420, concluding that claimant voluntarily left work without good cause. On March 10, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

FINDINGS OF FACT: (1) Staffing Solutions, a temporary staffing agency, employed claimant from October 4 through 17, 2016. Claimant was assigned to work at a law firm in a “temp- to- hire” position, *i.e.*, a temporary position which could become a permanent position, if claimant’s job performance was satisfactory.

(2) On October 11, 2016, the attorney for whom claimant worked told her not to return to work until October 17, 2016. The attorney then contacted the employer, and told a representative that the job was “not a good fit” for claimant, because claimant did not have the skills required to perform her job duties satisfactorily, and was unable to learn necessary tasks quickly enough. The attorney told the employer’s representative that he wanted to change the position from a “temp-to-hire” position to a position that was temporary, and that claimant could continue to work until he hired someone to replace her. Audio recording at 29:49.

(3) On October 17, 2016, the employer’s representative contacted claimant and told her the attorney was changing her position to a temporary one because she was “not a good fit” for the assignment, and that she could continue working until the attorney hired a replacement. Audio recording at 29:49. Claimant told the employer representative that she was quitting the job because she wanted to find a full time permanent position that provided medical benefits.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant voluntarily left work without good cause.

We begin by determining the nature of the work separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). Here, claimant agreed that the employer had work available for her after October 17, but that she chose not to perform it. Claimant's work separation is therefore a voluntary leaving.

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.

Claimant quit her job on October 17, 2017¹ because the position to which she was assigned no longer offered the possibility of becoming a permanent one, and she wanted to look for a permanent job with medical benefits. Claimant failed to demonstrate that she faced a grave situation, had she continued to work for the employer for a period that promised to be relatively brief. It is understandable that claimant wanted to look for and find a permanent position that provided her with benefits. She did not assert or demonstrate, however, that continuing to work for the employer until he was able to hire her replacement negatively affected her ability to look for other work. A reasonable and prudent person, who wanted to find a permanent job, would nevertheless have continued to work for the employer for an additional and relatively brief period.

Claimant voluntarily left work without good cause. She is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 17-UI-77420 is affirmed.

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

¹ The parties disagreed on the date claimant quit her job. The employer's representative testified that claimant quit on October 13, 2016, the date on which she told claimant about the attorney's dissatisfaction with claimant's work and the change in the status of her position. Claimant, however testified that she first learned that the attorney was unhappy with her performance and wanted to change her position to a temporary one on October 17, 2016, and that she told the employer she was unwilling to continue working for the employer on that date. We note that the employer's representative, who testified first, presented no testimony, evidence, or argument to rebut claimant's assertion that the work separation occurred on October 17. We have therefore found facts in accordance with claimant's account of the relevant events. Even if we had accepted the employer's version of the events, it would not have changed the outcome of this decision.

DATE of Service: April 3, 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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