

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0436

Reversed
Disqualification

PROCEDURAL HISTORY: On October 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 122655). Claimant filed a timely request for hearing. On November 16, 2016, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for November 30, 2016, at which claimant failed to appear. On December 1, 2016, ALJ Wyatt issued Hearing Decision 16-UI-72037, dismissing claimant's hearing request for failure to appear. On December 13, 2016, claimant filed a timely request to reopen the hearing. On January 11, 2017, OAH mailed notice of a hearing scheduled for January 24, 2017. On January 24, 2017, ALJ Wyatt conducted a hearing, at which the employer failed to appear, and on January 27, 2017 issued Hearing Decision 17-UI-75627, allowing claimant's request to reopen and concluding that claimant voluntarily left work with good cause and was not disqualified from benefits. On February 1, 2017, the employer filed an application for review with the Employment Appeals Board (EAB). On February 21, 2017, EAB served Decision 2017-EAB-0132, setting aside Hearing Decision 17-UI-75627 as unsupported by a complete record, and remanding it to OAH for development of a complete hearing record. On February 28, 2017, OAH mailed notice of a hearing scheduled for March 24, 2017. On March 24, 2017, ALJ Wyatt conducted a hearing, at which the claimant and employer appeared, and on April 5, 2017 issued Hearing Decision 17-UI-80380, concluding that claimant voluntarily left work with good cause and was not disqualified from benefits. On April 12, 2017, the employer filed an application for review with EAB.

The employer submitted written argument to EAB, but failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider the employer's argument when reaching this decision.

FINDINGS OF FACT: (1) Claimant was the obligor for two child support orders issued in Nevada. The orders required claimant to pay child support through income withholding. Claimant's understanding of the Nevada orders was that the withholding amount would be 18 percent of her disposable income.

(2) Claimant had a period of employment with Adventure Products USA, LLC, the employer, from June 2013 through June 2015. In October 2015, the employer received income withholding orders from the Oregon Child Support Program (CSP) directing the employer to withhold \$240 per month for one child, and \$120 per month for another with a total combined withholding of \$360, or of 50 percent of claimant's disposable income for both orders. The employer hired claimant again from February 8, 2016 until July 21, 2016 to sew products. The employer's owner was uncertain how much to withhold and spoke with representatives from the child support divisions in Nevada and Oregon. They instructed her to withhold 50 percent of claimant's weekly income for child support.

(3) Beginning with her first paycheck after February 8, 2016, the employer withheld 50 percent of claimant's income for child support. Claimant disagreed with the amount of child support withheld by the employer and asked her case manager at CSP about the amount. The case manager told claimant that the amount "was based on what the judge had ordered plus 20 percent for back arrears." Transcript at 10.

(4) Multiple times before June 23, 2016, claimant argued with the owner regarding the amount the employer withheld from claimant's income for child support. Claimant showed the owner Nevada court documents allegedly stating claimant's withholding amount would be 18 percent. The owner told claimant she would not change the withholding amount based on the Nevada court documents. In late June 2016, claimant complained again to the owner that the child support amount the employer was withholding was incorrect. The owner told claimant to bring in "judge-signed Oregon documents" regarding the amount. Claimant argued that there were no Oregon documents because it was a Nevada case. The owner told claimant to quit if she did not like the child support withholding amount.

(5) On June 21, 2016, claimant received notice from Wasco County District Court that the child support case for one of her children would be closed. The court notice stated that funds that had not been distributed when the case closed would be returned to claimant. The owner had planned to submit the child support the employer had collected from April, May and June 2016 on a quarterly basis. Claimant asked the owner to return the withheld funds to claimant rather than sending the funds to CSP. The owner asked claimant's child support case worker how to proceed regarding child support, and she told the owner to continue withholding 50 percent of claimant's income for child support and not return the funds to claimant. The owner understood from the CSP representative that the employer was required to submit the child support to CSP each month.¹

(6) On June 28, 2016, the employer submitted claimant's child support withholdings from April, May and June 2016 to CSP.

(7) On July 21, 2016, claimant reported to work and saw the owner's husband opening the gate to the workplace. Claimant complained to him that the owner would not reduce the amount of child support it withheld to 18 percent. The owner's husband told claimant that the information the employer had received was to withhold 50 percent, and that she had to provide a telephone number or name of someone who the owner could talk to "and support what [claimant was] saying." Transcript at 32-33. Claimant was dissatisfied with his response, got on her bike, and left work. Claimant did not return to

¹ It should be noted that an employer subject to an income withholding is required to pay the amounts withheld to the Department of Justice or the entity specified in the order within seven business days after the employer receives the income. ORS 25.411.

work. The employer submitted claimant's child support payments from July 2016 to the CSP at the end of that month.

(8) On July 21, 2016, claimant quit work because she disagreed with the percentage of her income withheld by the employer for child support, and was dissatisfied that the employer did not remit the child support in a timely manner to CSP during April, May and June 2016.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude 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.

In Hearing Decision 17-UI-80380, the ALJ concluded that claimant left work with good cause because the employer did not submit claimant's child support withholdings to the child support office in a timely manner. Somewhat illogically, the ALJ then found that although the employer realized and rectified in June 2016 its mistake regarding when to submit the payments it collected, claimant had good cause to quit work for that reason nearly one month later, on July 21, 2016.² We disagree.

To the extent claimant left work because the employer failed to remit her child support on time after the employer withheld the income, claimant did not show she had good cause to quit when she did. Although it is not reasonable to expect an employee to work indefinitely for an employer that fails to comply with all the terms of a child support order, claimant failed to show that the employer's failure to remit the payments on time was an ongoing practice likely to continue. The record shows that, once the employer learned it was not permitted to wait until each quarter ended to submit the funds, it paid all the funds it had collected to CSP. The owner paid the funds to CSP on June 28. Claimant asserted at hearing that the child support payments did not "post" until the end of July 2016. However, the posting date does not establish that the payments were not submitted until that time. Transcript at 39-41. Moreover, the record does not show that the employer's delay in forwarding the child support for April, May and June was so egregious an error that it created a situation of such gravity for claimant that no reasonable and prudent person would have continued to work for her employer for an additional period of time. Indeed, claimant herself asked the employer to give her the funds instead of CSP. Claimant therefore failed to establish that she quit work with good cause due to the employer's error in failing to remit the child support payments when collected.

To the extent claimant quit work because she disagreed with the amount the employer withheld from her income, claimant failed to show that she faced a situation of such gravity that she had no reasonable

² Hearing Decision 17-UI-80380 at 2, 4.

alternative but to quit. Claimant did not establish that the employer erred by collecting 50 percent of her income for child support. The information the employer received from Oregon and Nevada child support representatives showed the employer was to collect 50 percent. To the extent claimant believed it was an incorrect amount, claimant had the option of contacting her CSP case manager, lead worker or manager in her local child support division office to get help to resolve the problems she perceived with how her child support orders were enforced. Claimant also had the option of asking the child support program to review the terms of her support orders. Given that claimant knew and had contacted her case manager before, she did not show that it would be futile to contact the child support program to, at most, resolve the problems she perceived with her orders, or at minimum, educate herself about the terms of her orders.

Claimant voluntarily left work without good cause. She is disqualified from receiving unemployment insurance benefits on the basis of her work separation.

DECISION: Hearing Decision 17-UI-80380 is set aside, as outlined above.

DATE of Service: May 5, 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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