

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0773

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 9, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 95218). Claimant filed a timely request for hearing. On June 6, 2017, ALJ Seideman conducted a hearing, and on June 7, 2017 issued Hearing Decision 17-UI-85050, affirming the Department's decision. On June 27, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision. Even if we had considered claimant's new information, the outcome of this decision would remain the same for the reasons explained.

FINDINGS OF FACT: (1) Greystar Management Services, LP employed claimant as a community manager from July 2000 to April 6, 2017.

(2) At all relevant times, claimant was the single parent of a child with disabilities. Claimant required time off work and a flexible schedule to accommodate her need to take her child to medical appointments. Claimant notified the employer of the situation and the employer, including the regional property manager, agreed to accommodate claimant's scheduling needs.

(3) The employer had some concerns about claimant's attendance for reasons that were unrelated to her absences for her child. She had missed a company meeting the regional property manager had wanted her to attend. She had also provided late notice of a couple of absences that resulted in the office at the community she managed being unnecessarily closed. The employer counseled claimant to improve her attendance and listed that there could be consequences if she did not, including discharge.

(4) On March 16, 2017, claimant learned that her child was scheduled for an important medical appointment on March 20th, and claimant would need to have time off work that day to attend the appointment. She spoke with the regional property manager about the situation and believed she had adequately conveyed her need for time off work. Claimant sent emails asking other employees to help cover the office in her absence, but no one volunteered. On March 19, 2017, claimant sent another email in which she requested leasing help for March 20th from 10:00 a.m. to 6:00 p.m., or even for just a half day. Claimant's email stated that the person would not be working alone and that claimant would be available to answer questions and just had month-end close-out work to do. No one replied.

(5) Claimant reluctantly rescheduled her child's medical appointment because, after having been counseled for attendance issues that had resulted in the office being unattended, she did not want to risk getting in trouble. On March 20th, claimant reported to work. That afternoon, the regional manager, who had been out of the office and was still working her way through several hundred emails that had accumulated in her absence, contacted claimant stating that she had just received claimant's email requesting coverage and was sending office help for her. The regional manager did not understand that claimant had needed time off work, and though, based upon the March 19th email, that claimant only needed someone to help cover the leasing duties while she worked on other things.

(6) Claimant felt concerned about the scheduling situation. Her child's health and medical appointments were her first priority, but she had felt compelled to reschedule an important appointment so she could work instead. She had transferred to a new property in January 2017 and, during the four months she had worked at that property, felt she had more difficulty scheduling and finding office coverage for her absences than she ever had before. She also felt that she had clearly conveyed to the regional manager that she needed time off work on March 20th and that the regional manager had been nonresponsive. Claimant knew she was not eligible to transfer to a different property because she had not been working at the new property long enough and because she had a recent counseling notice in her employee file. She concluded it would be best to just leave her job so she could be available for her child.

(7) On March 23, 2017, claimant notified the employer that she intended to resign in two weeks. Approximately one week later, the regional manager notified claimant that if she was unable to find coverage for the office within the company that she could use a temporary employee instead. The regional manager was unaware that claimant had not previously known about that option. Effective April 6, 2017, claimant quit work.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that 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.

Claimant quit work because, on March 20th, she was unable to take time off to take her child to a medical appointment. Claimant did not show that her situation was grave. It had happened on only one occasion during her 17 year employment term, and appears to have happened because the regional manager, who had been away from the office, did not understand that claimant needed time off rather than help to cover her under-staffed office while she worked on other duties. Rather than quitting work when she did, claimant had the reasonable alternatives of speaking with the regional property manager about the situation, explaining that she needed the time off for her child's appointment, and asking how she could have communicated that need to the regional property manager more clearly. If necessary, claimant also had the reasonable alternative of reporting any ongoing problems obtaining time off work for her child's appointments to other members of management. Although claimant felt as though she had been reprimanded for doing so once in the past, she ultimately testified that the counseling she received had been about her attendance rather than insubordination or another issue resulting from her discussion with the regional property manager's supervisor.

In reaching this decision, we note that OAR 471-030-0038(5)(g) provides that "[l]eaving work with good cause includes . . . leaving work due to compelling family reasons," and that OAR 471-030-0038(1)(e)(B) defines "compelling family reasons" to include when "[t]he illness or disability of a member of the individual's immediate family [including minor children] necessitates care by another and the individual's employer does not accommodate the employee's request for time off." We have considered the application of those rules to claimant's situation, and conclude that claimant did not show good cause for leaving work due to compelling family circumstances.

As a preliminary matter, the ALJ did not ask claimant whether or not her child was a minor. Rather than remand for that information, we have assumed facts in the light most favorable to claimant, including that her child was a minor and that her child "necessitated care" by claimant. Assuming for the sake of argument that claimant quit work to provide care because of her minor child's disabilities, the evidence in this record fails to support that the "employer does not accommodate the employee's request for time off" based upon claimant's inability to take time off work on one occasion. The totality of the evidence adduced at the hearing demonstrates, rather, that the employer generally accommodated claimant's need for time off work, and that her inability to take time off on March 20th was an anomaly. Additionally, although claimant testified that she had clearly explained her need for time off on March 20th to the regional manager, referring in part to her March 19th email to the regional manager and others, the record also shows that the March 19th email did not actually indicate that claimant needed time off work or needed someone to cover the office in her absence; rather, the email stated that she needed leasing help and would be available, suggesting that she would merely be performing other tasks that day. The record therefore fails to show either that claimant made a "request for time off" or that the employer would "not accommodate" the request, either on March 20th or as a general practice.

For those reasons, we conclude that claimant did not show that she quit work for good cause. She must therefore be disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-85050 is affirmed.

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

DATE of Service: July 21, 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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