

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0946

Reversed
No Disqualification

PROCEDURAL HISTORY: On June 15, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work for the employer without good cause (decision # 113034). Claimant filed a timely request for hearing. On July 27, 2017, ALJ Seideman conducted a hearing, and on July 28, 2017 issued Hearing Decision 17-UI-89184, affirming the Department's decision. On August 8, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument with her application for review. However, 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). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Sprint United Management Co. employed claimant as a sales associate from October 2015 to May 8, 2017.

(2) In June 2017, claimant became pregnant, and experienced complications that led her to provide the employer a doctor's note stating that her pregnancy was high-risk, and that claimant therefore needed to be able to sit at work. At claimant's request, the employer gave her permission to take extra breaks and use the only seated work station as needed. However, one of claimant's coworkers routinely interrupted claimant when she was on break. Although the coworker had no supervisory authority over claimant, he refused to move from the seated work station for her unless she provided him a doctor's note stating that she needed to be able to use it.

(3) Claimant complained to the employer's district manager about the coworker refusing to move from the seated work station unless she provided him a doctor's note. The district manager forwarded

claimant's complaint to the store manager, who informed the coworker that he needed to move from the seated work station when claimant needed to sit. However, claimant arranged to transfer to another store, effective December 31, 2016, due to the coworker's behavior.

(4) On December 25, 2016, claimant's best friend was killed. On December 27, 2016, claimant started a leave of absence under the Family and Medical Leave Act (FMLA) and Oregon Family Leave Act (OFLA) due to complications with her pregnancy. The employer assured claimant that she would be able to transfer to the other store when she returned from her leave of absence.

(5) In late January 2017, claimant's daughter was born 9 weeks premature with health issues. Claimant remained on leave from work to care for her daughter. In mid-March 2017, claimant's daughter was hospitalized for 10 to 15 days due to "acute respiratory failure due to RSV bronchitis," causing "respiratory distress," and then required "1 month of recovery outside of hospital." Exhibit 2. Claimant remained on leave from work to care for her daughter, and was scheduled to return to work on May 2, 2017.

(6) When claimant returned to work on May 2nd, she learned that she could not transfer to the other store, and that the coworker whose behavior had led claimant to request the transfer had been promoted, meaning that claimant would work under his supervision. On May 2nd, the former coworker told claimant he was surprised the employer allowed claimant early maternity leave after her friend was killed because the employer only gave him three days off when his father died. Claimant was offended by the comment because her leave of absence was due to complications with her pregnancy, and not due to her friend's death.

(7) On May 3, 2017, claimant left work early after learning that her daughter was having trouble breathing. Claimant's daughter was hospitalized again for pneumonia, and claimant learned that after being released, her daughter needed claimant to care for her, including performing breathing treatments every 2 hours, for an indefinite period of time.

(8) On May 4, 2017, claimant informed the employer that she needed another leave of absence to care for her daughter. The employer informed claimant she had exhausted her FMLA leave, but still had some OFLA leave remaining, and provided her the paperwork for requesting another leave of absence. On May 8, 2017, however, claimant quit work to care for her daughter.

(9) As of July 27, 2017, claimant's daughter still needed claimant to care for her, including performing breathing treatments every 2 hours.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant voluntarily left work for the employer 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). "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). 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-89184, the ALJ concluded that claimant voluntarily left work for the employer without good cause because she could have taken additional time off from work to “get her daughter’s medical condition stabilized.”¹ However, we disagree with the ALJ’s determination that claimant taking additional time off work to care for daughter was a reasonable alternative to quitting.

At the time claimant quit work, she had just returned from a likely unpaid four month leave of absence due to complications with her pregnancy and the need to care for her daughter, who was born 9 weeks premature with health issues, hospitalized for 10-15 days due to acute respiratory failure due to bronchitis, and required another month of recovery after being released. During that time, claimant exhausted her FMLA leave, and presumably a large portion of her OFLA leave. Claimant’s daughter had just been hospitalized again with pneumonia and needed claimant to care for her, including performing breathing treatments every two hours, for an indefinite period of time. As of the date of the hearing, almost three months after claimant quit, her daughter still needed claimant to provide that care for her. It therefore is unlikely that claimant had enough OFLA leave remaining to “get her daughter’s medical condition stabilized,” or that the employer would have allowed claimant to extend her leave of absence beyond that required under OFLA, and to the extent claimant needed. And even if the employer would have, we do not find a second protracted unpaid leave of absence a reasonable alternative to quitting for claimant under the circumstances. *See Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980) (protracted unpaid leave of absence of four months not a reasonable alternative to leaving work).

We therefore disagree with the ALJ and conclude that claimant quit work with good cause. Claimant is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 17-UI-89184 is set aside, as outlined above.²

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

DATE of Service: August 23, 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.

¹ Hearing Decision 17-UI-89184 at 3.

² This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

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