

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0998

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause. The employer filed a timely request for hearing. On July 31, 2017, ALJ Murdock conducted a hearing, and on August 2, 2017, issued Hearing Decision 17-UI-89466, concluding claimant voluntarily left work without good cause. On August 21, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument to EAB that presented facts not offered into evidence during the hearing. Claimant did not explain why she was unable to present those facts during the hearing, or otherwise show, as required by OAR 471-041-0090 (October 29, 2006), that factors or circumstances beyond her reasonable control prevented her from doing so. Accordingly, EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Oregon RV Outlet LLC employed claimant as a part-time recreational vehicle (RV) detailer from September 1, 2016 to May 24, 2017.

(2) In claimant's work as an RV detailer, she often encountered mold in the vehicles she worked on. In early 2017, claimant began to experience breathing difficulties, headaches and rashes that she attributed to an upper respiratory infection. However, the symptoms continued, and on May 16 and 17, 2017, claimant called into work and told an office worker that she would be absent from work for an unspecified condition until after she saw her doctor on May 22, 2017.

(3) On May 24, 2017, claimant reported to work, gave the owner her doctor's note dated May 22, 2017, requested a worker's compensation claim form and told her she would not be returning to work for the employer because her medical provider had attributed her condition to a sensitivity to mold in the workplace. However, the note had released claimant to "modified work", with some lifting restrictions and stated that claimant was "[u]nable to work around mold." Transcript at 19, 45. On June 5, 2017, claimant gave the owner a second note, dated June 1, 2017, that also released claimant to "modified work," again with lifting restrictions, and also stated "no working with mold." Transcript at 20.

(4) Claimant never asked the employer to accommodate her work restrictions and return her to “modified work” even though she understood that the employer detailed many newer RVs that did not have mold and could probably accommodate her lifting restrictions.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant voluntarily left work without 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 the employer for an additional period of time.

In Hearing Decision 17-UI-89466, the ALJ concluded that claimant voluntarily left work without good cause, reasoning that because the employer’s owner credibly asserted that “the employer had other recreational vehicles that [claimant] could have worked on which did not contain mold” claimant had a reasonable alternative to quitting when she did. Hearing Decision 17-UI-89466 at 2. We agree.

Although claimant asserted that most of the RVs that the employer detailed were old and contained some mold, an assertion the employer’s owner disputed, claimant admitted that the employer routinely detailed new RVs that did not have mold. *Cf.* Transcript at 44, 22. The owner also clarified that claimant could have worked on vehicles that did not have mold and would not have been required to lift items outside of her restrictions had she requested to continue working in accordance with her modified work release. Transcript at 19, 22. Because claimant admitted she never requested the employer to accommodate her doctor’s restrictions (Transcript at 14), she failed to establish that no reasonable and prudent person in her circumstances would have made such a request and continued to work for the employer for an additional period of time.

Because claimant had a reasonable alternative to leaving work, she failed to show that the reason or reasons that prompted her decision to leave work constituted good cause. Claimant is therefore disqualified from receiving unemployment insurance benefits on the basis of her work separation

DECISION: Hearing Decision 17-UI-89466 is affirmed.

J. S. Cromwell and D. P. Hettle.

DATE of Service: September 18, 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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