

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1076

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 20, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 161118). Claimant filed a timely request for hearing. On August 28, 2017, ALJ Monroe conducted a hearing, and on September 1, 2017, issued Hearing Decision 17-UI-91843, affirming the Department's decision. On September 6, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Thomas H Ireland Inc. employed claimant as a log truck driver from November 16, 2015 to June 4, 2017.

(2) For years prior to May 2016, claimant, his wife and her daughter lived with family members, and for that reason, they did not have an established rental history. When they tried to secure a residence of their own, they encountered difficulty obtaining approval due to their rental history and credit record. Beginning in approximately May 2016, they resided with claimant's mother and his stepfather in Winchester, OR, near the employer's Myrtle Creek station, out of which claimant worked.

(3) Claimant's residence with his mother and stepfather, which also included his stepbrother, was stressful for claimant, his wife and her daughter. The stepfather often was angry for no apparent reason and demanded that claimant spend time with the stepbrother, who had mental health issues. The stepfather also had a disagreement with claimant's wife and young daughter and eventually evicted them from the residence in May 2017. Claimant's wife and her daughter then moved to California to stay with her mother and her mother's fiancé. At that time, her mother and her fiancé were in the process of selling their house to move to Tennessee, which they eventually did in June 2017. Claimant stayed in Oregon and lived with his mother in Winchester while continuing to work for the employer.

(4) Around June 1, claimant made the decision to quit work and move to Tennessee to be with his family. He gave the employer two weeks' notice of his intent to quit on June 14, 2017. However, the residence of his wife and her daughter in Tennessee had not yet been settled. The employer offered claimant the opportunity to rent indefinitely an apartment owned by the employer less than two miles

from the Myrtle Creek station. The employer was not concerned about claimant's rental history because it had claimant's earnings history. Claimant did not know or inquire what the rent would have been but believed he could have afforded it. However, claimant decided to quit as scheduled, and did on June 14, 2017, but did not move from Oregon to Tennessee until August 2017.

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 he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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.

Claimant quit work when he did to facilitate his move to Tennessee and be with his family. While moving to Tennessee may have a good personal decision for both him and his family, claimant failed to meet his burden to show that his reason for leaving was a reason of such gravity that no reasonable and prudent person, of normal sensitivity, exercising ordinary common sense, would have concluded that he had no reasonable alternative but to quit his job on June 14, weeks before he was able to leave for Tennessee, when he had the reasonable alternative of maintaining employment with the employer for an indefinite period of time while living in its affordable apartment unit close to his work station.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until he has earned four times his weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 17-UI-91843 is affirmed.

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

DATE of Service: October 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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