

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1223

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 19, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 133422). Claimant filed a timely request for hearing. On October 12, 2017, ALJ Murdock conducted a hearing, and on October 16, 2017 issued Hearing Decision 17-UI-94650, affirming the Department's decision. On October 19, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Kaiser Foundation Health employed claimant as a sleep medical equipment specialist and registered respiratory therapist from December 2001 to July 26, 2017.

(2) In March and June 2017, the employer disciplined claimant for making a mistake and failing to follow procedures three times. The employer told claimant that he would be discharged if he made another mistake within a 12-month period.

(3) Claimant concluded that his discharge was inevitable. He did not agree with the employer that his prior mistakes had warranted the level of discipline he had received and was concerned that the employer could discharge him for any type of error, even ones claimant considered insignificant. Claimant had some upcoming medical and dental needs for which he needed insurance coverage, and was concerned that if he made a mistake and was discharged before he took care of those things he would lose his insurance coverage. The employer offered to give claimant three months of insurance coverage if he resigned; claimant agreed to quit effective July 26, 2017.

CONCLUSIONS AND REASONS: We agree with the ALJ that 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 his employer for an additional period of time.

There is no dispute that claimant's position with the employer was, at the time he quit work, tenuous. He was on probation and subject to discharge for errors committed within a year, and was concerned, if discharged, about the effect losing his medical and dental benefits might have on his ability to receive treatments he needed. Generally speaking, however, for a claimant to show good cause to voluntarily leave work, he must show that he experienced some manner of harm from staying at work, or, conversely, must derive some benefit for leaving work. *See e.g. Oregon Public Utility Commission v. Employment Dep't.*, 267 Or. App. 68, 340 P.3d 136 (2014) (so stating). At the time he quit work, claimant had not experienced adverse consequences as far as his access to health insurance was concerned and had not been threatened with certain discharge. In sum, beyond his concern that he might lose his health insurance if discharged, he had not suffered a legally significant harm. Additionally, it is not clear in this case that claimant derived a benefit from quitting. Although he guaranteed his access to health insurance for a three-month period by quitting, in quitting his job he forfeited what was otherwise unlimited access to health insurance for as long as he maintained his employment. Given that his employment was in jeopardy because of his own mistake and deviations from certain policies, claimant appears to have had a significant amount of control over the circumstances jeopardizing his ongoing access to health insurance. He did not show that the possibility of making a mistake or deviating from policy, or consequences to him for doing so, amounted to a grave situation, nor did he establish that he derived any legally significant benefit from quitting his job in order to prevent the possibility that he might be discharged at some unknown point in the future. Claimant voluntarily left work without good cause. He is therefore disqualified from receiving unemployment insurance benefits because of his work separation.

DECISION: Hearing Decision 17-UI-94650 is affirmed.

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

DATE of Service: November 17, 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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