

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1278

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 29, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 94852). Claimant filed a timely request for hearing. On October 27, 2017, ALJ Scott conducted a hearing and issued Hearing Decision 17-UI-95630, affirming the Department's decision. On November 3, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument which, among other things, included a reason for quitting work that she did not mention during the hearing and a document related to that new reason. Claimant did not explain why she did not offer this reason and document at the hearing or otherwise show that factors or circumstances beyond her reasonable control prevented her from doing so as required by OAR 471-041-0090(2) (October 29, 2006). For this reason, EAB did not consider the new information that claimant presented by way of her written argument. EAB considered only information received into evidence during the hearing when reaching this decision.

FINDINGS OF FACT: (1) Southern Oregon Goodwill employed claimant from August 18, 2004 until July 21, 2017, last as a supervisor of sales and production.

(2) Sometime before the week of June 19, 2017, claimant's mother was diagnosed with lung cancer and began undergoing medical treatments. Because no other immediate family members lived in the vicinity of claimant's mother, claimant became the family member responsible for transporting her mother to appointments and caring for her.

(3) Claimant's mother sometimes had adverse side effects from the chemotherapy and radiation treatments she received and claimant was required to provide hands-on care for her. Whether the mother would have side effects from treatment was an unpredictable occurrence, a "day to day thing," and "never anything consistent." Audio at ~16:21. Claimant's manager cooperated with claimant to change her work schedule to accommodate her mother's medical appointments and needs. Although the

employer did not have a regular part time work schedule available for claimant, the manager was willing to make changes to the schedule to enable claimant to transport her mother to medical appointments and to care for her mother after those appointments even if it would be “very hard” for the employer to schedule around the needs of claimant’s mother. Audio at ~23:40. Claimant believed the manager would continue to try to accommodate claimant’s need to care for her mother. Audio at ~18:13.

(4) Sometime around the week of June 19, 2017, claimant obtained the paperwork that would allow her to request a leave from the employer to care for her mother under the Family Medical Leave Act (FMLA). Claimant was going to request a leave because she thought that if she was working, she might not have enough time to care for her mother. Sometime later, claimant learned that a leave under FMLA was unpaid and the only benefit to her of a FMLA leave was the guarantee she would be able to return to her previous position after the leave was over. Claimant decided not to pursue a FMLA leave because she would receive no pay while on the leave since she had already exhausted the sick pay and vacation pay she had accrued.

(5) On July 9, 2017, claimant told the assistant store manager that she was quitting work to care for her mother, effective July 21, 2017.

(6) On July 21, 2017, claimant voluntarily left work.

CONCLUSIONS AND REASONS: 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). A claimant who leaves work for compelling family reasons has good cause to leave work. OAR 471-030-0038(5)(g). “Compelling family reasons” include the need to care for an ill immediate family member when the individual’s employer does not accommodate the individual’s request for time off. OAR 471-030-0038(1)(e)(B) and (1)(f).

While claimant’s mother was a member of claimant’s immediate family for purposes of the “compelling family reasons” provision, claimant failed to demonstrate that the employer did not accommodate her requests for time off, which is a prerequisite to applying OAR 471-030-0038(1)(e)(B) and OAR 471-030-0038(5)(g) to show that she had good cause for leaving work to care for her mother. Claimant did not assert or establish that the employer ever refused to give her time off that she requested either to take her mother go medical appointments or to care for her mother after her mother received treatments. Claimant also did not assert or establish that the employer likely would have refused to authorize a FMLA leave for her had she proceeded to request one. On this record, claimant did not show that her circumstances fell within those which are recognized under the “compelling family reasons” provision for establishing good cause under OAR 471-030-0038(1)(e)(B) and OAR 471-030-0038(5)(g).

Claimant also did not show that the need to provide care for her mother constituted good cause for her to leave work under the general good cause provision of OAR 471-030-0038(4). Claimant did not show that she or her mother sustained significant detriment during the period of time in which she was

continuing to work and the employer was adjusting her schedule, as needed, to accommodate her caregiving role. While claimant contended that the employer might not be able to continue accommodating her, claimant also stated she believed that the employer would continue to try to do so in good faith, and did not cite any specific reasons for thinking that the employer would become unable to do so, or any concrete occurrences that supported her contention. As above, claimant did not suggest, let alone prove, that the employer would not have authorized a FMLA leave for her to care for her mother, or that her need to care for her mother would have continued longer than the duration of the FMLA leave. While claimant's FMLA leave would have been unpaid, such leave would have been of a temporary and finite duration, and it is difficult to see how, on balance, quitting work, and thereby eliminating all of her income, was a reasonable alternative to taking an unpaid leave that would have protected her job until she was able to return. On this record, claimant did not show that continuing to seek schedule adjustments from the employer or taking a FMLA leave were not reasonable alternatives to leaving work to provide care for her mother during the mother's medical treatments.

Claimant did not show she had good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 17-UI-95630 is affirmed.

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

DATE of Service: December 7, 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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