

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1287

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 15, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 105630). Claimant filed a timely request for hearing. On October 19, 2017, ALJ Scott conducted a hearing at which the employer failed to appear and issued Hearing Decision 17-UI-94948, affirming the Department's decision. On November 7, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

In written argument, claimant asked for a new hearing to provide new information that was "misunderstood, overlooked or unavailable" at the time of hearing. Claimant's request for relief is construed as a request to have EAB consider additional evidence under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. Because claimant does not state the nature of the new information or explain why she was prevented by circumstances beyond her reasonable control from presenting the information at the hearing, claimant's request to have EAB consider its additional evidence must be denied, and we reached this decision based upon our review of the hearing record. ORS 657.275(2).

FINDINGS OF FACT: (1) Hummingbird Glenn, an adult foster home with four residents, employed claimant from July 17, 2017 until August 1, 2017 as a caregiver for the residents.

(2) During claimant's first week of employment, the employer gave her three 24-hour shifts. Claimant was satisfied with that schedule.

(3) During her first two days of work, claimant had difficulty moving one of the residents. Claimant's inability to lift the resident correctly caused risk to the resident and claimant. Claimant told the owner she was unable to lift the resident. The owner told claimant she could use a mechanical patient lift to lift the resident, but that she had to be shown how to use the lift first with that particular resident. The owner told claimant she would send someone to show claimant how to use the lift. After her third day of work, claimant told the employer's resident manager that she was not able to move the resident. The

manager gave claimant some back braces to augment her strength and enhance her ability to lift the resident. The braces did not enable claimant to lift the resident.

(4) During claimant's second week of employment, the owner reduced claimant's schedule to two 24-hour shifts per week. Claimant told the owner the reduction in hours was a financial burden for her.

(5) By the end of July 2017, the owner had not yet provided claimant training on how to use the mechanical lift for the resident claimant could not lift. After her initial conversation with the owner on claimant's second day of work, claimant did not ask the owner about the lift instructions again because she and the owner discussed "other pending issues" whenever claimant saw the owner. Audio Record at 15:25-15:36.

(6) On August 1, 2017, the owner told claimant she was changing the days that claimant worked, causing claimant to have to work on weekdays. Claimant was dissatisfied with the change in her schedule because she was seeking work as a part time licensed resident manager, which claimant anticipated would require her to be available Monday through Friday. Claimant did not have an offer for work as a resident manager when she quit.

(7) On August 1, 2017, claimant quit work because she was unable to move one of the residents and because the employer reduced her hours and changed her schedule.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude that 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). 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.

Claimant quit work because she was unable to lift one of the residents on her own and because the employer changed her work schedule. To the extent claimant left work because she was unable to lift one of the residents for whom she provided care, claimant did not have good cause to quit when she did. That claimant faced a grave situation by presumably being required to lift a resident whom she was not able to lift without risking harm to the resident or herself. Claimant failed to show, however, that she had no reasonable alternative but to leave work for that reason. Claimant could have reminded the owner that she needed to be shown how to use the mechanical lift for the resident, or could have asked the manager for the instructions. Both the owner and manager had responded to claimant's concerns about lifting the resident during her first few days of work, and the record therefore does not show they were indifferent to claimant's concerns or unlikely to address the matter further. We conclude that a reasonable and prudent person would have pursued such reasonable alternatives before quitting her job.

To the extent claimant quit work because the employer changed her schedule, claimant did not have good cause to quit. OAR 471-030-0038(5)(e) provides that if an individual quits work due to a reduction in hours, she has quit work without good cause unless the cost of working for the employer exceeds the amount of remuneration received or continuing to work substantially interferes with her return to full time work. Claimant did not assert, and the record does not otherwise show, that the cost of working for the employer exceeded the amount of remuneration claimant received working for the employer. Nor are we persuaded by claimant's argument that working for the employer from Monday through Friday interfered with her search for work as a residential manager. *See* Audio Record at 11:22-11:57. Claimant's schedule of two shifts per week left her ample time to search for other work. Moreover, claimant could have continued to work for the employer and quit only if she were offered a job with a schedule that conflicted with her schedule at Hummingbird Glen. Finally, although the reduction in hours caused claimant a financial hardship, claimant did not improve her financial situation by quitting and losing that income.

Claimant voluntarily left work without good cause. She is disqualified from the receipt of unemployment benefits based on this work separation.

DECISION: Hearing Decision 17-UI-94948 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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