

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1337

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 5, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 122556). Claimant filed a timely request for hearing. On November 7, 2017, ALJ Frank conducted a hearing, and on November 9, 2017 issued Hearing Decision 17-UI-96569, affirming the Department's decision. On November 15, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Sunset Hills Preschool employed claimant as a preschool teacher from January 2016 until June 16, 2017. The employer's preschool was located in Beaverton, Oregon.

(2) When claimant was hired, she lived in Portland, Oregon and commuted to work with her daughter, who attended the employer's preschool. Sometime around September 2016, claimant and her family moved to Newberg, Oregon. Claimant continued to commute to work with her daughter during the 2016-2017 school year. Claimant's home in Newberg was located approximately 17 miles from the employer's preschool, and claimant's commute usually took around 45 minutes.

(3) Sometime in winter 2017, claimant told the employer's owner that she was going to quit at the end of the 2016-2017 school year. Claimant told the owner that her daughter was going to start kindergarten in the Newberg public schools in fall 2017 and claimant wanted to locate work that was nearer to her home in Newberg so she could drive her daughter to and from school. Claimant preferred not to have her five-year old daughter ride the school bus to kindergarten. Because claimant's daughter's kindergarten school day was scheduled to begin at 8:30 a.m., claimant did not think she would be able to arrive at the employer's preschool by the 9:00 a.m. start of the preschool day if she drove her daughter to kindergarten in Newberg.

(4) Claimant did not ask the employer's owner if the employer would be able to make any changes that would allow her to continue working while transporting her daughter to and from kindergarten in Newberg. Had claimant asked, the employer would have authorized claimant to arrive at work later than

9:00 a.m. and would otherwise have been “flexible” with claimant’s work schedule to accommodate claimant’s desire to take her daughter to and from kindergarten in Newberg. Audio at ~16:20.

(5) On June 16, 2017, the employer’s 2016-2017 school year ended. That day, 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). Leaving work without good cause includes leaving suitable work to seek other work. OAR 471-030-0038(5)(b)(A). 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.

While claimant’s desire to transport her daughter to and from public kindergarten in Newberg was understandable, it was not a grave circumstance. Claimant candidly noted at hearing that her daughter would be able ride a public school bus to and from kindergarten if she did not drive her. Audio at ~12:21. Claimant did not suggest that her daughter would be exposed to significant hazards by riding the bus or that kindergarten students were not adequately protected from harm while on the bus. In addition, claimant did not dispute the employer’s willingness and commitment to adjusting claimant’s work schedule to allow claimant to take her daughter to and from kindergarten during the 2017-2018 school year, or suggest that the employer lacked the ability to do so. Audio at ~16:05. For these reasons, claimant did not show that she likely would be unable to drive her daughter to and from kindergarten unless she quit work, or that, if work did not allow her drive her daughter, a reasonable and prudent person in her position would not have allowed her daughter to ride the bus to school. Finally, to the extent claimant might have left work to seek new work in Newberg, OAR 471-030-0038(5)(b)(A) provides that a person who leaves suitable work to seek other work does not have good cause for leaving work. Claimant did not contend that her work for the employer was not suitable for her.

Claimant did not meet her burden to show that she quit work with good cause. Claimant is disqualified from receiving unemployment benefits.

DECISION: Hearing Decision 17-UI-96569 is affirmed.

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

DATE of Service: December 15, 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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