

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1493

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 7, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 135414). On November 21, 2017, the employer filed a request for hearing with the Department, which forwarded the request to the Office of Administrative Hearings (OAH). On December 18, 2017, ALJ Lewis conducted a hearing, and on December 19, 2017, issued Hearing Decision 17-UI-99360 concluding that the employer's request for hearing was timely and that claimant voluntarily left work without good cause. On December 26, 2017, claimant filed a timely application for review Hearing Decision 17-UI-99360 with the Employment Appeals Board (EAB).

With her application for review, claimant submitted written argument to EAB. Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Liberty Mutual Group Inc. employed claimant as a paralegal from August 2009 to August 16, 2017.

(2) In 2017, claimant's 71 year-old mother was living with her husband, claimant's stepfather, in a remote community near Laramie, in southern Wyoming. Claimant's mother and stepfather told claimant that her mother had been falling on occasion, including on July 4, 2017, when she fell during a visit to Washington State, causing her to be hospitalized for several days. It was determined that the cause of her falls was a drop in blood pressure which occurred when she stood. Although the cause of her blood pressure problem was not determined, she was prescribed medication to help stabilize it.

(3) After claimant's mother and stepfather returned to Wyoming, her stepfather notified claimant that they were planning to purchase a home in northern Wyoming. He told claimant that he did not believe he could care for her mother, that they would have room for claimant in the new home and asked her to

come live with them “after they closed on the house” to help provide care for her mother, to which claimant agreed. Transcript at 16-17.

(4) On July 18, 2017, claimant submitted a letter of resignation to the employer, stating that she would continue to work until August 18, 2017, after which she would be moving to Wyoming to assist in caring for her parents due to recent health issues. Claimant worked for the employer until August 16, 2017.

(5) Before quitting, claimant did not request or inquire about a leave of absence under Oregon or federal leave laws, which the employer offered to employees who qualified. Before quitting, claimant did not verify the seriousness of her mother’s health condition with her medical providers.

(6) On September 1, 2017, claimant’s mother and stepfather closed the real estate transaction on their new Wyoming home and moved in shortly thereafter. Claimant did not leave Oregon for Wyoming until September 17, 2017 and arrived in Wyoming on September 20, 2017.

(7) After claimant arrived in Wyoming, she helped prepare meals for her mother and stepfather and was available to take her mother to medical appointments. However, in mid-October 2017, claimant began looking for work because she determined that she was not needed to provide day-to-day care for her mother, whose condition had improved, and applied for unemployment benefits.

(8) On November 7, 2017, the Department issued decision # 135414 allowing claimant benefits after concluding she left work with good cause. Decision # 135414 notified the parties, including the employer, that they had the right to appeal the decision by returning an attached form, which identified claimant by name and the decision by # 135414, or requesting a hearing by telephone, and that any appeal had to be received by November 27, 2017 to be timely.

(9) On November 21, 2017, the employer’s representative faxed a request for hearing to the Department, identifying claimant by name and social security number, attaching claimant’s resignation notification, administrative decision # 135414, and stating:

“This is reference to form, Administrative Decision, dated November 7, 2017 which allows benefits to the above individual. We are requesting a hearing . . . as we wish to appeal the determination based on the following.

The claimant voluntarily quit for personal reasons. We question if the claimant is able and available for work. Attached resignation letter.”

Exhibits 2 and 3. The Department received the employer’s fax on November 21, 2017, as indicated by the notation on the top of the transmission pages of “11/21/17 9:53:13” and on November 28, 2017, forwarded the faxed documents on to OAH, which then scheduled the hearing in this case.

CONCLUSIONS AND REASONS: We agree with the ALJ that the employer’s request for hearing was timely and that claimant voluntarily left work without good cause.

Request for Hearing. Claimant asserted that because OAH did not receive the request for hearing until November 28, 2017, the request for hearing was late. However, OAR 471-040-0005(1) (July 14, 2011) defines a “request for hearing” as something that “may be filed on forms provided by the Employment Department or similar offices in other states. Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal.” The employer did not complete the “request for hearing” form provided by the Department to request a hearing in this matter. However, the employer attached a copy of the decision and “specifically request[ed] a hearing” regarding claimant and the decision “dated November 7, 2017.” Exhibit 2. Accordingly, the employer’s November 21, 2017 fax transmissions expressed “a present intent to appeal” decision # 135414. The request for hearing was timely as the encoded date on the employer’s fax transmission was “11/21/17”, within the time allowed to appeal the decision. See OAR 471-040-0005(4)(c)(“When filed by fax, the date of filing shall be the encoded date on the fax document . . .”).

Voluntary Leaving. A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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 to provide some assistance in caring for her mother due to her mother’s health issues. However, claimant did not show that her circumstances were of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense in those circumstances, would have concluded that she had no reasonable alternative but to leave work when she did. Claimant did not observe her mother’s circumstances first-hand, she did not verify the seriousness of her mother’s condition with her medical providers before submitting her resignation and failed to show that she could not have continued to work for an additional period of time before quitting on August 16, 2017. Before quitting work when she did, claimant could have pursued those reasonable alternatives to quitting. Moreover, although claimant testified that her stepfather asked her to come live with them to help care for her mother “after they closed on the house”, the record shows that the real estate transaction in question did not close until September 1, 2017, more than 2 weeks after her last day of work.

In reaching this decision, we also note that OAR 471-030-0038(5)(g) provides that “[l]eaving work with good cause includes . . . leaving work due to compelling family reasons,” and that OAR 471-030-0038(1)(e)(B) defines “compelling family reasons” to include when “[t]he illness or disability of a member of the individual’s immediate family [including parents] necessitates care by another and the individual’s employer does not accommodate the employee’s request for time off.” We have considered the application of those rules to claimant’s situation, and conclude that claimant did not show good cause for leaving work due to compelling family circumstances.

As a preliminary matter, claimant did not establish that her mother “necessitated care” by another to the extent that it was necessary for her to leave her job for any length of time. She did not inquire about that issue with her mother’s medical providers before quitting and admitted that after she quit she learned

that her mother's condition was not as dire as was portrayed by her stepfather. However, even assuming that claimant's mother's illness or disabilities, whatever that consisted of, "necessitate[d] care by another" and that claimant quit work to provide that care, the evidence in this record fails to support that the "employer [did] not accommodate [claimant's] request for time off" for that reason. Claimant did not dispute that she did not apply with the employer for any leave from work and the employer's witness established that leave under both federal and state law was potentially available to her for that reason. Transcript at 20-21 and 33-34. Accordingly, the record therefore fails to show either that claimant made a "request for time off" or that the employer would "not accommodate" the request making OAR 471-030-0038(5)(g) inapplicable to this case.

In sum, we conclude that the employer's request for hearing was timely and that claimant did not establish that she voluntarily left work with good cause under ORS 657.176(2)(c). Accordingly, she is disqualified from receiving unemployment insurance benefits on the basis of her work separation.

DECISION: Hearing Decision 17-UI-99360 is affirmed.

J. S. Cromwell and D. P. Hettle;
S. Alba, not participating.

DATE of Service: January 30, 2018

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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