

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0056

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 12, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 82241). Claimant filed a timely request for hearing. On January 4, 2018, ALJ Meerdink conducted a hearing at which the employer did not appear, and on January 5, 2017 issued Hearing Decision 18-UI-100256, affirming the Department’s decision. On January 12, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that contained information that was not part of the hearing record. Claimant did not explain why she did not present this new information during the hearing and did not 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 that reason, EAB did not consider the new information that claimant sought to present by way of her written argument. EAB considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Transamerica Financial Life employed claimant as an onsite representative for a retirement plan from sometime in 2008 until November 3, 2017. Claimant was hired specifically to work at the worksite of one of the employer’s clients in Southern Oregon.

(2) In approximately late September 2017, the employer’s client notified the employer that it was discontinuing its relationship with the employer. Consequently, claimant could no longer work at the client’s site in Southern Oregon. The employer did not have onsite representatives at any of its other client locations in Oregon.

(3) Sometime in October 2017, the employer offered work as a traveling retirement plan representative to claimant. Claimant hoped to be able to perform this work online from her home without traveling to clients’ locations. The employer made no “guarantees” to claimant that she would not be required to travel or that she would perform the work online. Audio at ~8:00. Claimant accepted the work.

(4) Sometime in approximately mid-October 2017, claimant learned that the employer expected her to travel to Pittsburgh, Pennsylvania to meet with a client. The employer expected claimant to stay in Pittsburgh for one week beginning October 30, 2017. Claimant became concerned about traveling to Pittsburgh and the prospect of traveling to other densely populated cities with which she was unfamiliar in the course of her work. Claimant assumed she would need to rent a car to travel to client locations in those cities and, lacking driving experience in such metropolitan areas, she was not confident of her ability to do so. She thought the prospect of doing so was “daunting” and “did not think it was something [she] could take on.” Audio at ~12:35.

(5) At around this same time, claimant’s 93 year-old mother was hospitalized due to injuries received in a traffic accident in Michigan, where she lived. Sometime later, claimant’s mother was discharged from the hospital to a rehabilitation facility. Claimant had a sister-in-law who lived in Michigan and, although she was more “hands-off” than claimant, the sister-in-law would be able to care for the mother if the need arose. Audio at ~21:39.

(6) Sometime before October 30, 2017, claimant considered whether she was willing to travel to Pittsburgh or other densely populated areas for the employer as part of her work. Claimant did not specifically express to the employer that she was concerned about driving in Pittsburgh or other metropolitan areas, and did not explore with the employer whether it would allow claimant to travel by taxi or any means during her visits to clients’ locations rather than driving herself in a rental car. Claimant did not do so because it was her understanding that she was expected to drive herself and that her expense budget would not be sufficient to allow her to use taxis or other types of driving services. Around this same time, claimant’s mother was still in the rehabilitation facility and claimant was also concerned that her mother “might” need her assistance when she was discharged to her own home. Audio at ~13:09. Claimant decided she would quit her job with the employer rather than travel to Pittsburgh based on her concerns about driving and her mother. Sometime before October 30, 2017, claimant notified the employer that she was leaving work effective November 3, 2017. Sometime after October 30, 2017, claimant’s mother returned to her own home, after having been in the rehabilitation facility for three weeks.

(7) On November 3, 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). 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’s stated reasons for leaving work when she did were the prospect of driving a car in Pittsburgh beginning on October 30, 2017, and potentially other urban areas thereafter, and being available to care

for her mother in Michigan if she felt she was needed. Audio at ~14:30, ~17:06. At the time claimant decided to leave work, whether and when she might be called upon to provide care to her mother was speculative. Also, claimant did not contend or show that the sister-in-law was unable or unwilling to care for the mother in lieu of claimant during the week claimant was in Pittsburgh if her mother was discharged during that time. On this record, claimant did not show some family member likely would need to care for the mother when claimant was in Pittsburgh or some other city, let alone that claimant would need to be the one to do so.

With respect to the prospect of driving in Pittsburgh, claimant's lack of confidence in her driving abilities and her discomfort at going outside her "comfort zone" does not rise to the level needed to show the existence of a grave situation, particularly when claimant did not show that she had a mental or physical impairment that accompanied her discomfort. Audio at ~13:00. Moreover, on this record claimant repeatedly avoided directly answering the ALJ's questions about whether she had specifically informed the employer about her concerns over driving in Pittsburgh or whether she had asked the employer to take steps that would have relieved her from driving in Pittsburgh. Specifically, for example, claimant responded to the ALJ's direct questions by testifying that the employer was generally aware that she "was not a big city gal" and that her "lack of exuberance about being in [large] cities" was "pretty well known [by the employer]." Audio at 16:15, ~20:18. Given claimant's failure to directly respond to the questions the ALJ asked regarding that issue, we infer claimant did not directly and specifically tell the employer what her concerns were about driving or ask if the employer would make any alternatives available that would have eliminated the need for claimant to drive during her work trip to Pittsburgh or, potentially, other populous areas. Given that, and in the absence of evidence making it more likely than not that allowing the employer to address her concerns would have been a futile exercise, we conclude that doing so was a reasonable alternative to leaving work under the circumstances as claimant described them.

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

DECISION: Hearing Decision 18-UI-100256 is affirmed.

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

DATE of Service: February 13, 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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