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BYE: 201842

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

843
VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0133

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 27, 2017 the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 110318). Claimant filed a timely request for hearing. On January 19, 2018, ALJ Logan conducted a hearing, and on January 22, 2018 issued Hearing Decision 18-UI-101355, affirming the Department's decision. On February 5, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Hyland Restoration, LLC employed claimant from May 9, 2016 until July 14, 2017 working in various capacities renovating houses, including as a laborer, carpenter and painter. Claimant typically worked 40 hours per week and earned $18 per hour. Claimant's work day ordinarily ended at 5:00 p.m.

(2) During his employment, claimant lived in Eugene, Oregon with his partner and their son. As of July 2017, the son was 18 months old. Claimant's partner worked in a grocery store and sometimes worked evening shifts.

(3) The employer purchased houses and renovated them for resale. Claimant typically worked between three and four months on each house that the employer renovated. Claimant performed work for the employer on houses located in Creswell, Sweet Home and Cottage Grove, Oregon. The house in Sweet Home was located around 50 miles away from claimant's residence and the house in Cottage Grove was located around 30 miles away.

(4) As of July 2017, work was nearing completion on the house that was being renovated in Cottage Grove. After it was completed, the employer intended to next perform renovation work on a house located in West Fir, Oregon and then to move on to another house located Sweet Home. West Fir was located approximately 50 miles from claimant's residence in Eugene.

(5) As completion neared on the Cottage Grove house, claimant told his manager that he did not think he could work on the upcoming house projects in West Fir and Sweet Home because of their distance from his residence in Eugene and the hour he would spend driving to and from those projects, which would delay his arrival home to care for his son in the evenings by one hour. Claimant was concerned about losing time with his son and his partner having to turn down some evening work shifts because claimant would not be home in time to take over child care responsibilities from her. Claimant was also concerned about the costs of the commute to work. The manager told claimant he would speak with the owners to see what they could do. Sometime before the house work was finished on the house in Cottage Grove, the manager told claimant that the owner proposed to buy a tank of gas each week for the manager's truck and claimant could ride with him each day at no expense to the job site. Claimant did not like that proposed solution because the manager sometimes needed to work later than the end of claimant's shift, which would delay claimant's arrival home. Around this time, claimant understood that beginning with work on the West Fir house, the employer was going to implement a weekly work schedule for employees of four ten hour days rather than five eight hour days. However, the employer never implemented this change.

(6) On Friday, July 14, 2017, claimant carpooled with the manager for the last day working on the Cottage Grove house. On Monday, July 17, 2017, the employer's crew was going to start work on the house in West Fir. On their ride home, claimant brought up his reluctance to work on the West Fir and Sweet Home houses and told the manager that the carpooling solution proposed by the owners "won't work for me." Audio at ~19:40. The conversation between both of them became emotional. The manager told claimant, "That's what we're doing. If you can make it, you can. If you can't, you can't." Audio at ~19:45. At that time, claimant got out of the manager's vehicle. Claimant did not return to work after July 14, 2017.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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 his employer for an additional period of time.

Although claimant cited the distance between his Eugene residence and the upcoming houses to be renovated in West Fir and Sweet Home as a grave circumstance, he had been able to travel previously to work on a house in Sweet Home without consequences sufficiently detrimental to cause him to quit work. As well, immediately before quitting claimant had been working on a renovating a house in Cottage Grove, which was only 20 miles less distant from claimant's home than the upcoming projects in West Fir and Sweet Home. It does not appear that the time spent in commuting an additional twenty miles each way to work, and the delay those additional miles would have on claimant's arrival home at the end of his work day, would have been sufficiently burdensome to constitute a grave circumstance. While claimant emphasized that his partner might not be able to work some evening shifts due to his late

arrival home, he did not suggest that one or two hours of paid child care, until he arrived home, was beyond his and his partner's financial means or that the cost of that child care would exceed the remuneration that he or his partner would earn for working those shifts. Audio at ~14:56. Simply put, claimant did not describe any effects from the time he would spend in commuting that additional 20 miles that would be unusually or gravely disadvantageous for him, his partner or his son.

In addition, claimant also did not dispute that the employer had never planned to and did not implement the schedule of four ten hour days per week or that the prospect of working that schedule, as opposed to five eight hour days was a significant factor in his decision to quit work immediately before the West Fir project began. Finally, even if claimant rejected the employer's proposal of a paid carpool to ease the financial burdens on him of the fifty mile commute to and from the job sites in West Fir and Sweet Home, claimant did not suggest that the cost of that commute was so excessive in the context of the $18 per hour that he earned that it constituted a grave circumstance. Despite claimant's understandable preference to limit his time and costs in commuting, and maximize the time he spent with his family, he did not show that his circumstances, as described by him, were grave or constituted good cause to leave work.

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

DECISION: Hearing Decision 18-UI-101355 is affirmed.

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

DATE of Service: <u>March 6, 2018</u>

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, and 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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