

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0199

Reversed
No Disqualification

PROCEDURAL HISTORY: On January 12, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 94442). Claimant filed a timely request for hearing. On February 13, 2018, ALJ R. Frank conducted a hearing, and on February 15, 2018 issued Hearing Decision 18-UI-103378, affirming the Department’s decision. On February 21, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Kohl’s Department Stores employed claimant as a cashier and customer service person from December 2016 to October 25, 2017.

(2) Sometime before October 2016, claimant booked a scuba diving “trip of a lifetime” to Indonesia. Claimant partially pre-paid for the trip, which was scheduled to begin October 27, 2017 and last 23 days.

(3) At hire in December 2016, claimant notified the employer of her trip, its duration, and that she would be leaving October 27, 2017. The employer told claimant that it was too early to put in a leave request but not to worry. The employer did not indicate that there were any problems with the timing of the trip or suggest that she would not be allowed to take the time off in October 2017.

(4) Between December 2016 and early October 2017, claimant frequently talked about her trip with coworkers and the employer’s management. No one from the employer’s management suggested that she would not be allowed to take time off for the trip.

(5) Claimant understood that the employer’s timekeeping system required that claimant submit her leave request three weeks prior to the trip. Three weeks prior to her trip claimant officially submitted her leave request. The employer denied the leave request, citing the beginning of the employer’s busy holiday season.

(6) Claimant discussed the matter with her supervisor, who suggested that claimant could either be discharged for an extended unauthorized absence or could quit her job to preserve her ability to be rehired. Claimant also inferred that she would get a better employment reference if she quit than if she was fired for absenteeism.

(7) Effective October 25, 2017, claimant quit work.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant left work with 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.

The ALJ found as fact that claimant “was informed that the employer either had no record of her vacation request or, alternatively, had denied the request due to the busy volume of the upcoming holiday season.” Hearing Decision 18-UI-103378 at 2. We disagree that claimant testified she was informed that the employer had no record of her vacation request, as claimant specifically said during the hearing that that had not occurred. The ALJ concluded that neither claimant’s “dissatisfaction” having her vacation leave request denied, nor her “desire to take a vacation” were “grave,” and that a reasonable and prudent person “would at a minimum, research the extent to which he or she could cancel such a trip and recoup its costs.” *Id.* at 2-3. We disagree with the ALJ that the record supports the ALJ’s conclusions.

In order for looking into canceling the trip and recouping its costs to be considered a reasonable alternative to quitting work, there must be some indication in the record suggesting that she would, actually, have been able to recoup her costs. On this record, however, the ALJ did not ask claimant how much money toward her trip she had already paid, whether the payments she had already made were or were not refundable, whether any of her friends’ travel plans depended upon claimant also going on the trip (e.g. double occupancy or group discounts), and the like. Without any evidence suggesting that a refund would have been possible, or that canceling the trip was feasible, the record fails to suggest that looking into those matters amounted to a reasonable alternative to quitting work under the circumstances.

On this record, claimant booked a trip of a lifetime prior to beginning work for the employer. She acted as any reasonable and prudent employee would by notifying the employer at the time of hire and regularly thereafter that she had vacation plans. At no point prior to her hire or during her employment did any member of management suggest that the employer might deny her vacation leave request, much less do so at any point in time at which it might have been reasonable for claimant to potentially alter or cancel her travel plans. Rather, claimant was told not to worry about it, which any reasonable and

prudent person would infer meant that her vacation leave request would be allowed once she submitted it. Claimant and her traveling companions had, we infer, already incurred significant expenses paying for their trip, and it is likely that many such expenses would have been non-refundable. Claimant could not both go on the trip and retain her employment, and the potential consequences of being discharged – including losing her job, re-hire rights, and a positive reference – were plausible. It seems unlikely under the circumstances described that any reasonable and prudent cashier would keep working rather than go on the partially paid, long-planned trip of a lifetime, about which she had given the employer ample notice. Likewise, it seems unlikely that a similarly situated individual would choose to be discharged rather than quit her job given the consequences of the former as compared to the benefits of the latter.

This is not to generally suggest that employees who quit work to take a vacation have established good cause for leaving work; that is not the case. Under these circumstances, however, where claimant discussed her vacation plans with the employer prior to hire, implicitly making getting time off work a condition of her acceptance of the work, and the employer never suggested over a period of almost a year that the employer might not allow the vacation leave, thereby implicitly allowing the leave request and giving claimant a reasonable basis for believing that she should continue making her vacation plans, we conclude that this claimant did establish that she acted as a reasonable and prudent person in deciding to quit her job, and therefore had good cause for doing so. Claimant is not disqualified from receiving unemployment insurance benefits because of this work separation.

DECISION: Hearing Decision 18-UI-103378 is set aside, as outlined above.¹

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

DATE of Service: March 22, 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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¹ This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits, if owed, may take from several days to two weeks for the Department to complete.