

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0270

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 10, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 72316). Claimant filed a timely request for hearing. On March 6, 2018, ALJ Meerdink conducted a hearing, continued on March 7, 2018, and on March 9, 2018, issued Hearing Decision 18-UI-104816, affirming the Department's decision. On March 13, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written to EAB that contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her 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 two hearings, and claimant's argument to the extent it was based on the record of those hearings, when reaching this decision.

The employer also submitted written argument to EAB, but failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the employer's argument when reaching this decision.

FINDINGS OF FACT: (1) Eastern Oregon Alcoholism Foundation (EOAF) employed claimant, last as a treatment aide, from May 9, 2016 to December 4, 2017.

(2) On July 11, 2016, the employer promoted claimant to perform "counselor in training" (CIT) work in addition to work as a treatment aide. Transcript at 12 (March 6, 2018 hearing). Claimant did not receive a pay increase with her promotion. Work as a CIT helps qualify an individual for certification as

certified alcohol and drug counselor (CADC). CADC certification requires applicants to pass a specific examination. However, to take the examination, an applicant must have completed certain number of continuing education units (CEU) and clinical experience hours under the supervision of a CADC. Although claimant paid a \$50 fee to begin the process toward certification as CADC, the employer paid for more than 300 CEUs towards claimant's education requirement.

(3) By October 2017, claimant was frustrated by the employer's clinical supervisor's failure to allow her to perform a sufficient number clinical experience hours to qualify for the CADC examination. She requested a copy of her personal file and learned that the employer had essentially demoted her to work as a treatment aide only. She requested a meeting with the employer's director and on October 31, 2017, met with the director and the employer's clinical supervisor to discuss her employment status. The director clarified claimant's status as a treatment aide only and both individuals explained that the change took place because claimant had been excessively loud in her communications, had yelled at a patient and had not dressed professionally at work. They told her that the issue would be revisited in 90 days to review her progress.

(4) Between October 31 and December 3, 2017, the employer did not provide claimant with any coaching, feedback or clinical opportunities. On December 3, 2017, when claimant reported for work, she learned that the employer had hired an individual from outside the employer to work as a CIT, a position she had hoped to be given. On December 4, 2017, she quit work for that reason.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant voluntarily left work without good cause.

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 the employer for an additional period of time.

At hearing, claimant testified that she quit in part because she was dissatisfied with being discriminated against regarding her pay as a CIT because she had learned that she had been paid less than other CITs and , in part, because the employer had not allowed her the opportunity to obtain sufficient clinical experience hours for certification. Transcript at 22-30 (March 6, 2018 hearing). However, claimant also testified that, but for learning on December 3, 2017 that the employer had hired a CIT from outside the employer, she would not have quit on December 4, 2017. Transcript at 17 (March 6, 2018 hearing). Thus, it was that event, and not her other concerns, that triggered claimant's decision to quit work when she did. That was the proximate cause of claimant's decision to quit work, and therefore, the proper focus of our analysis.

Although claimant was understandably dissatisfied with having been paid less than other CITs previously and with not receiving clinical hours experience and supervision from the employer's clinical

supervisor, we agree with the ALJ that claimant's work situation was not sufficiently grave at the time she quit work such that she had no reasonable alternative but to immediately submit her resignation. Hearing Decision 18-UI- 104816 at 3. Claimant could have continued to work as a treatment aide while requesting clinical opportunities to demonstrate that she was making progress in the areas of concern cited by the employer in the October 31 meeting, at least until the promised 90-day review. Claimant failed to meet her burden to show that that a reasonable and prudent treatment aide of normal sensitivity, exercising ordinary common sense in her circumstances, would have concluded that she had no reasonable alternative but to leave work immediately and forfeit any chance to obtain the clinical hours and education units necessary to allow her to take the desired CADC examination.

Claimant voluntarily left work without good cause. She is therefore disqualified from receiving unemployment insurance benefits because of her work separation, until she requalifies for benefits by earning four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 18-UI-104816 is affirmed.

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

DATE of Service: April 17, 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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