

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0447

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 22, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 132637). Claimant filed a timely request for hearing. On April 25, 2018, ALJ Wymer conducted a hearing, and on April 26, 2018, issued Order No. 18-UI-108169, affirming the Department's decision. On May 1, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review, claimant submitted a written argument. However, 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, and claimant's argument, to the extent it was based thereon, when reaching this decision.

FINDINGS OF FACT: (1) Consults of Orlando, a staffing agency located in Florida that placed IT specialists, employed claimant as a temporary recruiter from August 29, 2017 to November 29, 2017. Claimant worked for the employer from Hillsboro, Oregon via the internet.

(2) Claimant originally worked for the employer as permanent, full time recruiter from sometime in 2013 until she first quit in May 2017. Claimant quit at that time to provide full time care for her husband who had experienced a failed back surgery in April 2017 and became tetraplegic¹ as a result. Claimant's husband lost the ability to use at least one of his arms in addition to his legs and so had to be helped with most life activities including transfers to and from his wheelchair. Claimant's husband also suffered from depression over his condition which became an additional stressor for claimant because it became difficult for him to accept care from anyone other than claimant. Claimant also cared for their young, school-age daughter. Claimant's only source of outside help was her mother-in-law, who cared

¹ Tetraplegia is paralysis of all four limbs. *Stedman's Medical Dictionary* 1478, 1791 (26th ed. 1995).

for claimant's father-in-law, who needed full time care due to his own disability. The only help the mother-in-law could provide was some occasional, limited care for claimant's daughter. Prior to quitting in May, claimant inquired of the employer about the availability of FMLA leave to her at that time to avoid the need to quit, but was told it was not available to her because of the size, or number of employees, working for the employer.

(3) In August 2017, claimant was experiencing substantial financial difficulties and inquired with the employer about returning to work. The employer respected claimant's work ethic and job skills she had previously demonstrated and so agreed to provide her with temporary part-time work at a lower compensation formula.

(4) Because claimant worked for the employer via the internet from the Pacific Time zone, she had to get up very early to interact with coworkers and clients of the employer who were located in the Eastern Time zone and lost sleep as a result. Combined with her need to provide full-time care for her disabled husband, provide most of the care for her minor daughter and financially provide for her family which was difficult for her to do based on part-time work of 10-20 hours per week, claimant became depressed and also suffered from insomnia.

(5) On November 28, 2017, claimant spoke with her manager about the stresses of caring for her husband and daughter, her insomnia and difficulties she was having working for the employer given her financial situation and location and they mutually agreed that quitting was claimant's best alternative. On November 29, 2017, claimant quit to provide the necessary care for her husband due to his disability, to provide care for her daughter and to provide relief from her work related stressors.

CONCLUSIONS AND REASONS: We disagree with the ALJ. Claimant voluntarily left work with 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. Quitting work with good cause also includes quitting due to compelling family reasons. OAR 471-030-0038(5)(g). OAR 471-030-0038(1)(e) provides, in relevant part, that compelling family reasons "means" the illness or disability of a member of the individual's immediate family necessitates care by another and the individual's employer does not accommodate the employee's request for time off work.

In Order No. 18-UI-108169, after finding that claimant's mother-in-law was available to provide some assistance and claimant had the option of completing the process for obtaining home care assistance from DHS, the ALJ concluded claimant did not show good cause for leaving work when she did, reasoning that although claimant "faced a grave situation...the evidence does not show that she had no other option but to leave work." Order No. 18-UI-108169 at 3. We disagree.

From claimant's unchallenged description of the nature, severity and duration of the family, physical and work stresses she was experiencing at the time she left work on November 29, 2017, it can only be concluded that claimant's situation was grave. Although claimant received some assistance from her mother-in-law, it was only in regards to her young daughter and it "rare" because she provided full time care for her own husband. Audio Record ~ 25:30 to 27:30. And, although claimant began, but did not complete the application process for care assistance from DHS, she discontinued it because she had made the decision to leave work to care for her husband full time in May because of the severity of his condition at that time and there was no indication in the record that she would have been granted the assistance had she continued the process or that it would have eliminated the need for her to provide the personal and emotional care her husband required given the severity of her husband's condition. On this record, claimant demonstrated that no reasonable and prudent person in her circumstances, given her multiple and varied stressors she was experiencing in November 2017, would have continued to work for the employer for an additional period of time.

We further conclude that claimant quit work due to "compelling family reasons" under OAR 471-030-0038(5)(g). On this record, the physical and emotional disability experienced by her husband necessitated claimant's personal care and although the record fails to show that she requested a leave for that reason from the employer before quitting in November 2017, she did request such a leave in May 2017 which the employer was unable to grant due to the size of its workforce. The employer's witness also testified that granting claimant temporary employment was the only and best alternative the employer could provide. Audio Record ~ 43:30 to 45:30. We infer from claimant's experience in May in unsuccessfully requesting leave for that reason that a similar request in November also would have been futile and the employer would not have accommodated claimant's request for time off to care for her husband.

Claimant demonstrated that her circumstances were grave and that, when she left work, she had no reasonable alternative to doing so. Accordingly, claimant had good cause for leaving work when she did and she is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

DECISION: Order No. 18-UI-108169 is set aside, as outlined above.²

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

DATE of Service: June 4, 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

² This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

'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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.