

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0638

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 4, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 124642). Claimant filed a timely request for hearing. On June 1, 2018, ALJ Shoemake conducted a hearing, and on June 7, 2018 issued Order No. 18-UI-124642, affirming the Department's decision. On June 18, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Portland Timbers employed claimant in stadium operations from May 5, 2017 to April 2, 2018.

(2) Claimant's disabled sister and mother lived in California. Claimant's mother provided care for claimant's sister, but was having difficulty dealing with that after claimant's father passed away because it was getting to a point that she was requiring full time care. Claimant decided to move to California to help his mother care for his sister.

(3) Claimant sought a promotion within the employer's business that would allow him to relocate to California without quitting his job. The employer did not select claimant for the position. In March 2018, claimant found out he did not get the promotion, and decided to quit work. He gave the employer one month's notice of his intent to quit work. He quit work effective April 2, 2018 to move to California to help care for his sister, and because he wanted a career change and to go back to school.

CONCLUSIONS AND REASONS: We agree with the ALJ that 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.

The reasons claimant provided for deciding to leave work are covered by specific administrative rules used in applying the OAR 471-030-0038(4) “good cause” standard to voluntary leavings. OAR 471-030-0038(5)(b)(A) states that leaving suitable work to seek other work is not good cause. To the extent claimant left work because he wanted a career change, he left suitable work with the employer to seek other work, and therefore left work without good cause. OAR 471-030-0038(5)(b)(D) states that leaving work to attend school is leaving without good cause, unless attending school is required by law. To the extent that claimant’s decision to leave work for a career change that necessitated he return to school, it appears that he was not required by law to attend school, and he therefore left work without good cause.

OAR 471-030-0038(5)(g) states that leaving work with good cause includes leaving work due to compelling family reasons. “Compelling family reasons” includes the illness or disability of a member of the individual’s immediate family that necessitates care by another and the individual’s employer does not accommodate the employee’s request for time off. OAR 471-030-0038(1)(e)(B). “Immediate family” includes “spouses, domestic partners, parents, and minor children under the age of 18, including a foster child, stepchild or adopted child.” OAR 471-030-0038(1)(f). Although the ALJ did not ask claimant whether or not his sister was a minor, the record nevertheless shows that he did not have good cause to leave work for “compelling family reasons” because he did not establish that it was more likely than not that his sister “necessitated” care by him, and he did not establish that his employer would not accommodate his request for time off, or would not have done so had claimant requested it.

For the reasons stated, claimant did not show that he left work with good cause. He is therefore disqualified from receiving unemployment insurance benefits because of his work separation until he qualifies for benefits under Employment Department law.

DECISION: Order No. 18-UI-110887 is affirmed.

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

DATE of Service: July 12, 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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