

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0818

Reversed
Disqualification

PROCEDURAL HISTORY: On July 20, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 94350). Claimant filed a timely request for hearing. On August 13, 2018, ALJ Janzen conducted a hearing, and on August 14, 2018, issued Order No. 18-UI-114871, concluding claimant voluntarily left work with good cause. On August 22, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer's written argument contained information that was not offered into evidence during the hearing and did not explain why it was unable to present the information at that time or otherwise show, as required by OAR 471-041-0090 (October 29, 2006), that factors or circumstances beyond its reasonable control prevented it from doing so. Accordingly, under ORS 657.275(2) and OAR 471-041-0090, EAB considered only the hearing record and the employer's argument to the extent it was based on the hearing record when reaching this decision.

FINDINGS OF FACT: (1) Sellwood Medical Clinic (SMC) employed claimant as a part-time front desk receptionist at its pediatric office clinic from September 14, 2015 to June 8, 2018.

(2) Claimant's work preference at hire was to work from 8:00 a.m. to 2:30 p.m., five days per week. However, because claimant would not qualify for benefits unless she worked 32 hours per week, to accommodate claimant, the employer offered and claimant accepted a work shift that began at 7:30 a.m. and ended at 2:30 p.m.

(3) In May 2018, the employer decided that it needed a full time receptionist at its pediatric office location rather than a part-time receptionist. It offered claimant the position but she declined because she had an eight year-old son who was dropped off near her home by a school bus at 3:15 p.m. during the school year, and she felt strongly that she had to pick him up at that time and care for him afterward so he was not left home alone. Due to personal circumstances, she had concluded that she had no other options for the pickup and care of that child. The bus stop was located approximately 15 to 20 minutes from claimant's work location.

(4) The employer valued claimant as an employee and, to keep her employed with benefits, offered claimant an alternative position as a part time receptionist at its adult clinic, which opened at 8:00 a.m. and was located across the street from its pediatric clinic, but with the hours of 8:00 a.m. to 3:00 p.m. Claimant concluded that she could not accept that position because she believed that if she did, she would have insufficient time to travel to her son's bus stop in time to pick him up once the next school year began in September, and so informed the employer. Although the employer offered to change claimant's hours for that position to 7:55 a.m. to 2:55 p.m. or 8:00 a.m. to 2:30 p.m., to accommodate claimant's child pickup needs during the school year, claimant declined the alternative position. Claimant did not believe that leaving work at 2:55 p.m. would give her sufficient time to travel to the bus stop by 3:15 p.m. and accepting the alternative of working from 8:00 a.m. to 2:30 p.m. would not have provided claimant with sufficient hours to qualify for benefits.

(5) On May 19, 2018, claimant notified the employer that she was quitting work, effective June 8, 2018, two days before her child's summer break began, due to her schedule change. Claimant quit work on June 8, 2018 because she did not believe she could work at the alternative position from 7:55 a.m. to 2:55 p.m. during her son's school year.

(6) Claimant would not have quit if the employer had not changed her hours. Claimant could have continued to work for the employer at the alternative position at least until September 2018 because claimant's high school daughter could have cared for claimant's eight year-old son during his summer break from school. The employer also would have allowed claimant to work at the alternative position from 7:45 a.m. to 2:45 p.m. if she had requested that.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 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.

In Order No. 18-UI-114871, the ALJ concluded that claimant voluntarily left work with good cause, reasoning,

Claimant quit her job on June 8, 2018 because the employer changed her schedule. Claimant believed that the new schedule would prevent her from picking up her eight year old son after school at 3:15 p.m. Claimant did not have anyone else available who could pick up her son. Claimant faced a grave situation... Claimant wanted to continue working for the employer, but the employer was unable to provide claimant with – or did not communicate to claimant that it had – a schedule that would allow her to pick up her son after school. Because claimant faced a situation of such gravity that she had no reasonable alternative but to leave work, the record established that claimant had good cause to quit her job with the employer.

Order No. 18-UI-114871 at 2.

We disagree. The ALJ failed to consider that, by claimant's own admission, she could have continued to work for the employer at the alternative position at least until her son returned to school in September 2018. Audio Record ~ 23:30 to 25:00. Accordingly, claimant failed to meet her burden to show that no reasonable and prudent person, in claimant's circumstances, would have continued to work for the employer for an additional period of time. Moreover, the employer had demonstrated to claimant, before she quit that it was willing to at least consider a further modification of her schedule to meet her personal needs. On May 29, 2018, after claimant forwarded her notice that she was quitting effective June 8, the employer's executive director sent claimant the following email:

“Hi Tiffany,

It's a bummer that even after talking with the school about the bus schedule and SMC's willingness to alter your schedule to maintain your hours and benefits, and get you home in time to meet the bus, you've decided that your time here at SMC has come to an end...”

Audio Record ~ 51:40 to 53:05. For that reason, claimant also failed to demonstrate that engaging in further discussion with the employer about modifying her proposed hours sufficient to satisfy her concerns about a timely pickup of her son once the school year began would have been a futile alternative to quitting work when she did.

Finally, claimant did not dispute that the employer also had offered her the alternative of working from 8:00 a.m. to 2:30 p.m., which claimant apparently rejected. Audio Record ~ 36:00 to 37:00. Although accepting that alternative would not have allowed claimant to work sufficient hours to qualify for benefits, it would have allowed her to maintain her employment indefinitely.

For all these reasons, claimant voluntarily left work without good cause under ORS 657.176(2)(c) and is disqualified from receiving unemployment insurance benefits until she has earned at least four times her weekly benefit amount from work in subject employment.

DECISION: Order No. 18-UI-114871 is set aside, as outlined above.

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

DATE of Service: September 24, 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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