

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0902

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 10, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 155533). Claimant filed a timely request for hearing. On September 4, 2018, ALJ R. Frank conducted a hearing at which the employer failed to appear, and on September 12, 2018, issued Order No. 18-UI-116425, affirming the Department's decision. On September 17, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Department of Human Services employed claimant from June 1998 until June 15, 2018 as an office specialist.

(2) Since 2016, the health of claimant's husband had deteriorated due to aging such that he had become "susceptible to heart attacks and passing out." Audio Record at 9:41 to 9:58. Claimant's home was located 34 miles from her place of work. Due to the distance to her workplace, claimant preferred to work from home or in Coquille where she lived to be near her husband as a "safety precaution." Audio Record at 16:23 to 16:47.

(3) The employer had granted claimant certain leave and accommodations to address her family needs. The employer permitted claimant to work four ten-hour days instead of five days per week. During 2016 to early 2017, claimant took intermittent family medical leave to care for her husband.

(4) For a period of time proceeding August 2017, the employer allowed claimant to telecommute for four hours per day, two to three days per week. In August 2017, claimant had a new manager who no longer allowed claimant to telecommute.

(5) Also during 2017, claimant took family medical leave to care for her terminally ill mother. Claimant was not able to take family medical leave for her husband for the remainder of 2017 because she had exhausted her leave to care for her mother.

(6) During 2018, due to time claimant took off from work to be with her husband, claimant had used all of her paid vacation time and all but one day of sick leave by April 2018. Claimant accrued one eight-hour paid day off from work per month. Claimant did not request additional family medical leave in 2018.

(7) Near the end of April 2018, claimant gave notice that she would quit work on June 15, 2018 to seek work closer to her home and husband.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without 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) (January 11, 2018). Leaving work with good cause includes but is not limited to leaving work due to compelling family reasons. OAR 471-030-0038(5)(g). “Compelling family reasons includes leaving work *to care for* an ill or disabled member of an individual’s immediate family and the employer does not accommodate the individual’s request for time off. (Italics added). OAR 471-030-0038(1)(e)(B) and (1)(f).

Although claimant’s husband was a member of claimant’s immediate family for purposes of the “compelling family reasons” provision, the record does not show that claimant left work to care for her ill husband, which is a prerequisite to applying OAR 471-030-0038(1)(e)(B) and OAR 471-030-0038(5)(g) to show that she had good cause for leaving work to care for her husband. The record does not show that her husband’s health condition necessitated that claimant provide care for him. Rather, claimant left work because she preferred to work at home or in Coquille, where she lived, as a safety precaution if her husband had a heart attack, fell, or fainted. Claimant testified that she was willing to work full time outside of the home if it was in Coquille, showing that she did not need to be home with her husband to care for him. Audio Record at 18:43 to 20:03. Nor does the record show that the employer would have refused to give claimant family medical leave had she proceeded to request leave. Although the employer was no longer willing to allow claimant to work from home, the employer had granted her family medical leave in the past. On this record, claimant did not show that her circumstances fell within those which are recognized under the “compelling family reasons” provision for establishing good cause under OAR 471-030-0038(1)(e)(B) and OAR 471-030-0038(5)(g).

Claimant also did not show that the need to leave work to seek work closer to her home and husband constituted good cause for her to leave work under the general good cause provision of OAR 471-030-0038(4). Claimant did not show that she faced a grave situation due to her husband’s needs or her diminished paid leave time. Claimant contended that she wanted to quit work before the employer discharged her, which she feared it might do if she continued to take time off from work. Audio Record at 20:45 to 21:19. However, the employer had given claimant medical leave in the past and claimant had returned to her job. Claimant also testified that she knew that she could return to her job if she took family medical leave. Audio Record at 17:42 to 17:49. Moreover, the record does not show that claimant was disciplined or otherwise subject to adverse employment consequences due to having requested or taken time off work. On this record, claimant did not show that taking intermittent or other FMLA leave

were not reasonable alternatives to leaving work when she did to seek work closer to her home in Coquille.¹

Claimant did not show she had good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-116425 is affirmed.

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

DATE of Service: October 23, 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.

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.

¹ OAR 471-030-0038(5)(b)(D) states, “Leaving suitable work to seek other work” is leaving without good cause.