

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0949

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 14, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 82442). Claimant filed a timely request for hearing. On September 4, 2018, ALJ Wyatt conducted a hearing, and on September 12, 2018 issued Order No. 18-UI-116431 affirming the Department's decision. On September 28, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument to EAB that contained evidence not offered during the hearing. Claimant did not explain why she did not present this additional evidence at the hearing or otherwise show as required by OAR 471-041-0090(2) (October 29, 2006) that factors or circumstances beyond her reasonable control prevented her from doing so. For this reason, EAB did not consider the additional evidence that claimant sought to present on review to EAB.

FINDINGS OF FACT: (1) Home Instead Senior Care employed claimant as a caregiver from sometime in approximately January 2018 until July 2, 2018. Claimant worked a night shift for the employer.

(2) Because claimant worked nights in the field, she did not have ready access to assistance from others. The employer expected claimant to obtain any information or assistance she needed during her shift by contacting an employee at a designated after-hours on-call telephone number.

(3) On one occasion, claimant needed to take a client to the hospital and called the employer's on-call phone line for directions. The employee who was responsible for answering the on-call line did not pick up and claimant left a message. When claimant did not receive a return call, she obtained directions from another source and accompanied the client to the hospital. The next day, claimant contacted the employer's office and complained about the lack of response to her call. On another occasion, around approximately the night of June 12, 2018, claimant was to provide care for a client in a facility.

Claimant did not have the correct access code to obtain entry to the facility, and called the on-call number to get the correct code. Claimant was not able to connect with the person responsible for answering the on-call line and left a message. Claimant did not receive a return call and, after she had waited around 15 to 20 minutes outside of the facility, an employee of the facility saw her and let her in. The next day, claimant contacted the employer's office and complained about the lack of response to her call. Claimant learned that the person assigned to the on-call line that night was the same person who had failed to call claimant back on the previous occasion she had called the on-call telephone number.

(4) On the night of July 1, 2018, claimant was again caring for the client at the facility. Employees of the facility inquired of claimant whether the employer had scheduled a caregiver for another client in the facility. To obtain this information, claimant called the on-call phone number, but was unable to reach a person and left a message. When claimant did not receive a return call, she apologized to the employees of the facility. The next day, claimant contacted the employer's office and complained about the lack of response to her call of the previous night. Claimant learned that the person assigned to the on-call line that night was the same person who had failed to call claimant back on the two previous occasions she had called the on-call telephone line.

(5) On July 2, 2018, claimant contacted the employer's caregiver services manager and stated she was quitting due to her problems in receiving assistance through the on-call telephone line. Claimant thought that the employer's failure to ensure that she received assistance through the on-call line made her look "unprofessional." Audio at ~12:26. Claimant had not formally complained to the employer's management about the lack of response she received from the on-call telephone line because she assumed that her two previous calls to the office had resulted in the employer counseling the employee who had failed to respond to her calls.

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). 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 her employer for an additional period of time.

Claimant appears to have left work due to the three times that she did not receive a response to calls for information or assistance she made to the employer's on-call phone line. Audio at ~10:36. While it likely was frustrating and stressful for claimant not to have received a response from the on-call line to those three calls, she did not describe any significant harm or situations of gravity that resulted to her from it. The record is insufficient to support the conclusion that a reasonable and prudent person of normal sensitivity in claimant's circumstances would have considered her situation grave and would have left work as a consequence of it. Claimant did not meet her burden to show good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

DECISION: Order No. 18-UI-116431 is affirmed.

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

DATE of Service: October 31, 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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