

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0061

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 18, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 94806). Claimant filed a timely request for hearing. On December 17, 2013, ALJ Micheletti conducted a hearing, and on December 26, 2013, issued Hearing Decision 13-UI-07146, affirming the Department's decision. On January 10, 2013, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument in reaching this decision.

FINDINGS OF FACT: (1) Lebanon Rehabilitation and Specialty Care employed claimant, last as its staffing and supply coordinator, from August 16, 2003 to September 13, 2013. Claimant previously worked for the employer as a certified nursing assistant (CNA) and residential assistant (RA).

(2) In 2011, claimant suffered a work related injury to her shoulder that required surgery. After surgery, her physician restricted her from lifting more than 30 pounds. Claimant communicated those restrictions to the employer and, consequently, the employer made her staffing and supply coordinator because in that position those restrictions were "manageable." Transcript at 19. When claimant's duties required items that weighed more than 30 pounds to be lifted or heavy items such as beds to be moved, she told her supervisors she could not do it and her supervisors told her to ask other employees for help. She often did so, but help was not immediately available. In those situations, claimant lifted or pushed the heavy items by herself, which caused her shoulder pain.

(3) In 2013, claimant asked her supervisor if she could be moved to a "floor" position such as a CNA or RA, which she believed she could perform. Transcript at 13. The supervisor told her that such a move

was possible and that the supervisor would get back to her. Transcript at 13-14. Claimant did not follow up on her request and when the transfer did not happen, on July 20, 2013, she gave the employer 30 days' notice that she was quitting because she could no longer perform the duties of her position. Claimant worked for an additional period of time at the employer's request and her last day was September 13, 2013.

(4) Claimant understood that the employer sometimes granted leaves of absences to injured workers but she did not inquire or request one.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ. 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) (November 1, 2009). Claimant had a persistent shoulder condition following surgery in 2012, likely a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). Therefore, we analyzed claimant's decision to leave work using the standard of a reasonable and prudent person with the characteristics and qualities of an individual with such impairment. OAR 471-030-0038(4). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Claimant had the burden to show that no reasonable and prudent person with the characteristics and qualities of her shoulder impairment would have continued to work for the employer for an additional period of time.

Claimant quit because she concluded she could no longer physically perform the duties of her position due to her shoulder condition. However, claimant did not assert or show that the employer required her to perform the duties of her position that was beyond her medical restrictions or ability or that she could not have continued to work in that position and simply asked, and waited, for help when confronted with having to perform such duties. Claimant had the burden, in part, to establish that a reasonable and prudent person with her chronic shoulder condition, in her circumstances and exercising ordinary common sense, would have reached the same conclusion and quit work when she did.

Although claimant undoubtedly experienced frustration over her inability to perform some tasks and her need to continually ask others for help, the employer advised her that a transfer to another position was a possibility and claimant failed to follow up on her request. Moreover, claimant did not assert that she was advised to quit by her physician, and admitted she did not even inquire about a possible leave of absence to give the employer additional time to act on her request, even though she knew injured workers had been granted leaves in the past. On this record, claimant failed to meet her burden to establish that no similarly situated person with the characteristics and qualities of a person with her disorder, exercising ordinary common sense, would have considered her circumstances to be of such gravity that she had no reasonable alternative but to leave work when she did.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until she has earned four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 13-UI-07146 is affirmed

Susan Rossiter and D. E. Larson;
Tony Corcoran, not participating.

DATE of Service: February 12, 2014

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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.