

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0213

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 6, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 83255). Claimant filed a timely request for hearing. On January 15, 2014, ALJ Sime conducted a hearing, and on January 17, 2014 issued Hearing Decision 14-UI-08779, affirming the Department's decision. On February 3, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument. However, claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) Wal-Mart Associates Inc. employed claimant as a cashier from November 27, 2007 to October 14, 2013.

(2) On August 30, 2012, claimant fell at work and suffered injuries, including to her left knee, and filed a workers compensation claim. From August 30, 2012 through mid-February 2013, claimant took intermittent medical leaves of absence due to her injuries.

(3) In mid-February 2013, claimant had surgery on her left knee and missed approximately four weeks of work. In mid-March 2013, claimant was released to light duty, and she returned to work for the employer. The employer's workers compensation insurer refused to compensate claimant for the injury to her left knee, or pay for claimant's surgery. Claimant hired an attorney to pursue her workers compensation claim.

(4) Claimant experienced intense pain working light duty for the employer, even when the employer reduced her hours. In or about September 2013, the employer doubled the number of cash registers for which claimant was responsible while on duty, increasing the pain she experienced while on duty. Claimant determined that she was physically unable to continue working for the employer much longer, even on light duty and with reduced hours.

(5) Claimant's attorney informed her that if she continued to pursue her worker's compensation claim, she would lose her case and receive no compensation for her knee injury or surgery. Claimant authorized her attorney to negotiate a settlement agreement with the employer and its workers compensation insurer. The employer agreed to settle the claim only if claimant quit work. Claimant's attorney advised her not to return to work, and to accept the settlement agreement. Claimant followed her attorney's advice to quit work and accept the agreement.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that claimant quit work with 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) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Claimant had suffered from work-related injuries that were permanent or long-term "physical or mental impairment[s]" as defined at 29 CFR §1630.2(h). A claimant with those impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for her employer for an additional period of time.

In Hearing Decision 14-UI-08779, the ALJ concluded that claimant quit work without good cause because she had the reasonable alternative of rejecting the settlement agreement and taking time off from work or asking the employer for reduced hours to alleviate her pain.<sup>1</sup> However, claimant's attorney advised her that if she rejected the settlement agreement and continue to pursue her workers compensation claim, she would lose her case and receive no compensation for her knee injury or surgery. Claimant had determined that she was physically unable to continue working for the employer much longer, even on light duty and with reduced hours. The record fails to show that the employer would have accommodated claimant by allowing her to take time off from work, or that taking time off would have alleviated the intense pain claimant experienced working for the employer when she returned. No reasonable and prudent person would have rejected her attorney's advice and the settlement agreement to continue working for the employer for a short period of time.

Claimant therefore quit work with good cause, and is not disqualified from receiving benefits based on her work separation from the employer.

**DECISION:** Hearing Decision 14-UI-08779 is set aside, as outlined above.

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<sup>1</sup> Hearing Decision 14-UI-08779 at 2-3.

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

**DATE of Service: March 4, 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.

This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.