

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0464

Affirmed
Disqualification

PROCEDURAL HISTORY: On January 30, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 154054). Claimant filed a timely request for hearing. On March 11, 2014, ALJ Shoemake conducted a hearing, and on March 17, 2014 issued Hearing Decision 14-UI-12621, affirming the Department's decision. On March 21, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument to the extent it was based on information received into evidence at the hearing. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

FINDING OF FACT: (1) U.S. Postal Service employed claimant as a postal support employee from February 1, 2013 to January 10, 2014.

(2) Prior to January 9, 2014, claimant lived in Portland, Oregon and worked for the employer at its Sellwood location in Portland. Her commute to and from work took approximately ten minutes, one way. Claimant typically worked split shifts six days per week. The employer occasionally required claimant to work a seven day week during busy periods. Claimant worked an average of 35 hours per week. Claimant suffered from anemia, which caused fatigue, and developed carpal tunnel syndrome, which caused pain. Claimant lived with her 18 year old son, who suffered from attention deficit and hyperactivity disorder (ADHD), and therefore required extra care.

(3) On January 9, 2014, the employer notified claimant that she was being transferred to its Parkrose location in Portland. Claimant speculated that her commute to and from work would take 20 to 25 minutes, one way, and "much longer" during rush hour. Transcript at 7. Claimant telephoned the Parkrose manager, who told claimant she would be required to work split shifts seven days per week.

(4) Claimant quit work to avoid a longer commute, and 7-day, 50-hour, work weeks. Claimant did not complain to the Parkrose manager's superiors or the employer's labor relations department before quitting.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant quit 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" for leaving work is such 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 anemia and carpal tunnel syndrome, 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 employer for an additional period of time.

Claimant quit work to avoid a longer commute, and 7-day, 50-hour, work weeks. At hearing, claimant testified that her new commute would have been a minimum of 20 to 25 minutes, one way, and "much longer" during rush hour. Transcript at 7. She further testified that her new manager told her she would be required to work split shifts seven days per week, asserted that the manager meant she would be required to so on a "regular basis," and speculated that she therefore would have been required to work approximately 50 hours per week. Transcript at 16-17. However, the employer's labor relations specialist testified that because claimant would have continued to work split shifts, she usually would have avoided commuting during rush hour. Transcript at 29. The labor relations specialist further testified that employees such as claimant only occasionally were required to work a seven day week during busy periods, and worked an average of 20 to 40 hours per week. Transcript at 29.

Claimant's concerns regarding her new commute and work schedule were understandable given her physical impairments and the need to care for her son, who suffered from ADHD. However, claimant quit work before determining the actual duration of her new commute, confirming whether she was required to work 7-day, 50-hour, work weeks on a regular basis, and, if necessary, complaining to her new manager's superiors or the employer's labor relations department. Claimant therefore failed to show that her new commute and work schedule were, in fact, so onerous that no reasonable and prudent person with her impairments would have continued to work for the employer for an additional period of time. Absent such a showing, claimant failed to establish that she had no reasonable alternative but to quit.

We therefore conclude that claimant quit work without good cause. Claimant is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-12621 is affirmed.

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

DATE of Service: April 16, 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.