

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0562

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 3, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #104137). Claimant filed a timely request for hearing. On March 25, 2014, ALJ Shoemake conducted a hearing, and on April 1, 2014 issued Hearing Decision 14-UI-13950, affirming the Department's decision. On April 7, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). Consequently, we considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) Triquint Semiconductor employed claimant as a clean room "etch operator" from November 24, 2008 to January 12, 2014. Audio Record ~ 8:30.

(2) In or around July 2013, claimant experienced a seizure and migraine headaches at work which qualified her in September for intermittent leave under the Family and Medical Leave Act (FMLA) but which did not prevent her from performing the essential functions of her job. Exhibit 1. In October 2013, claimant sprained her knee while at work which caused her to miss partial work days from October 13 to December 10 and full work days from December 10 to January 9. Claimant applied for and received worker's compensation benefits for her knee sprain. She also discovered she had a non-work-related osteoarthritis in her knees that might eventually require surgery but which would not be covered by worker's compensation insurance.

(3) In late 2013, the employer decided to reduce its work force by at least 20% and offered a severance package to employees who voluntarily agreed to be laid off from work. In December 2013, the employer notified employees of the “downsizing” plan and offered both a severance payment of \$14,000 and the possibility of later rehire to each employee who agreed to a voluntary separation. Audio Record ~ 10:00 to 14:00. It also notified employees that if an insufficient number of employees agreed to a voluntary separation, the employer would institute an involuntary reduction in force (RIF) which might include them and which would not qualify them for a severance payment. Claimant was notified of and attended the meeting at which the employer discussed the Voluntary Separation Program (VSP) and possible RIF. Employees were given until the end of January 2014 to apply for the VSP program.

(4) On January 9, 2014, claimant’s treating physician for her knee sprain released her to return to “regular or other suitable work.” Exhibit 1. Claimant discussed her return to work with her supervisor who told her that if she returned to her regular job, she and other employees who might remain after the VSP and/or RIF ended would be expected to work three times harder than before because of the reduced work force. Claimant asked for a job that would permit her to sit and be easier on her knee. Claimant’s supervisor informed her that such a job was not available and recommended that she apply for the VSP program. Claimant agreed to and did apply for the program because she wanted to take advantage of the severance offer, avoid the possibility of being laid off pursuant to a RIF and was concerned about the effect of work on her health conditions. Claimant’s VSP application was accepted, and on January 12, 2014, claimant voluntarily left work with the employer.

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 he proves, by a preponderance of the evidence, that he had good cause for quitting work when he 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 quit work. OAR 471-030-0038(4). Claimant had osteoarthritis in her knees and had experienced at least one seizure and several migraine headaches since July 2013. Consequently, we assume without deciding that those conditions constituted permanent or long-term “physical or mental impairment[s]” 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 impairments. OAR 471-030-0038(4). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person with her health conditions would have continued to work for the employer for an additional period of time.

To the extent claimant quit work to avoid being laid off without a severance package, she quit work without good cause. Although claimant might have been included in a RIF if an insufficient number of employees applied for the VSP program, claimant failed to show that such an outcome was either imminent or more than a mere possibility. Consequently, claimant failed to show that no reasonable and prudent person in her circumstances, who had the option of continuing to work for the employer even if the work would have been harder than before, would have chosen to leave work rather than continue to work for the employer for an additional period of time.

To the extent claimant quit work because of her health concerns, she also failed to show that she quit work with good cause. Although she had qualified for intermittent FMLA leave, her physician certified that her seizure and migraine conditions did not prevent her from performing the essential functions of her job and she returned to work after being diagnosed with these conditions but before her knee sprain, an injury for which she received worker's compensation. Although she had a disabling knee sprain between October 6, 2013 and January 9, 2014, on January 9 her treating physician released her to return to "regular or other suitable work." Claimant also had osteoarthritis in her knees, but failed to show that her arthritic condition qualified as a "serious medical condition" under FMLA or that her need for surgery was imminent. Consequently, claimant failed to show that no reasonable and prudent person with the characteristics and qualities of an individual with her impairments, in her circumstances and who had the option of continuing to work for the employer, even if the work would have been harder than before, would have chosen to leave work rather than continue for an additional period of time.

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 14-UI-13950 is affirmed.

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

DATE of Service: May 14, 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.