

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0739

Affirmed
Disqualification

PROCEDURAL HISTORY: On February 5, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 84537). Claimant filed a timely request for hearing. On April 10, 2014, ALJ Holmes-Swanson conducted a hearing, and on April 11, 2014 issued Hearing Decision 14-UI-14989, affirming the Department's decision. On April 30, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Azure Standard Farms employed claimant from September 12, 2013 to January 14, 2014.

(2) Claimant worked for the employer pulling bulk overstock, which required him to lift 50-55 pound bags repeatedly for up to 16 hours. On November 12, 2013, claimant injured his back at work, sought medical attention, and took one week off from work. When claimant returned to work on November 19, 2013, his back was not healed, and he filed a workers compensation claim. Through November and December 2013, claimant periodically took time from work, and worked light duty.

(3) On January 7, claimant was released to work eight hour shifts of modified work, lifting no more than 25 pounds at a time. Claimant's next doctor's appointment was on January 21, 2014, and his doctor believed claimant would be released to full duty at that time.

(4) Claimant did not believe his would be physically capable of returning to full duty, repeatedly lifting 50-55 pound bags for up to 16 hours, by January 21. Claimant believed it would be an additional several weeks before he was capable of returning to full duty.

(5) On January 12, 2014, claimant met with the employer's warehouse manager about his work status. Claimant hoped to transfer to the employer's receiving department, which did not require heavy lifting.

The employer did not have work available for claimant in the receiving department. The warehouse manager offered claimant work as a “dipper,”¹ which was less demanding physically, but more demanding mentally.

(6) Ten years earlier, claimant had worked for the employer as a dipper for approximately two months, and found that he was ill-suited mentally for the tasks it required. Claimant also had worked for the employer as a dipper while on light duty, and found that his skill had not improved.

(7) Claimant quit work because he did not want to work as a dipper.

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 he proves, by a preponderance of the evidence, that he had good cause for leaving 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 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). A claimant who quits work must show that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

At hearing, claimant essentially argued that work as dipper was not suitable work. Transcript at 21. ORS 657.190 provides that in determining whether any work is suitable for an individual, the Department shall consider, among other factors, the degree of risk involved to the health, safety and morals of the individual, the physical fitness and prior training, experience and prior earnings of the individual, the length of unemployment and prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual. Claimant testified that when he had worked for the employer as a dipper in the past, he was approximately half as productive as his coworkers. Transcript at 11. However, claimant failed to show that working as a dipper until he was able to return to work pulling bulk overstock, or until there was an opening in the employer’s receiving department, was so unsuitable that a reasonable and prudent person would have no reasonable alternative but to quit work. Absent such a showing that no reasonable and prudent person would have continued to work for his employer for an additional period of time, claimant failed to establish that he quit work with good cause.

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

DECISION: Hearing Decision 14-UI-14989 is affirmed.

Susan Rossiter and Tony Corcoran;
J. S. Cromwell, not participating.

¹ Transcript at 7

DATE of Service: June 3, 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.