

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0905

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 11, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #80101). Claimant filed a timely request for hearing. On May 12, 2014, ALJ Micheletti conducted a hearing, and on May 13, 2014 issued Hearing Decision 14-UI-17431, affirming the Department's decision. On May 20, 2014, the ALJ issued Amended Hearing Decision 14-UI-17953, modifying the Department's decision to change the date of disqualification from February 23, 2014 to March 2, 2014. On May 14, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Jack in the Box employed claimant from October 1, 2013 to March 2, 2014 as a restaurant manager.

(2) Claimant had experienced occasional migraine headaches since 2012. The employer required claimant to work 50 to 54 hours per week. During October and November 2013, claimant often experienced migraine headaches when he reported to work at 9:00 a.m. He began to report to work at 11:00 a.m. instead of 9:00 a.m., and his migraine headaches improved. During the first week of February 2014, the district manager told claimant he was required to report to work at 9:00 a.m. Claimant began reporting to work at 9:00 a.m., and began experiencing migraine headaches again.

(3) On approximately February 2, 2014, one of two fryers in the restaurant claimant managed stopped working. The owner sent a repair person to fix the fryer. On February 9, 2014, an explosion occurred when an employee attempted to light the fryer. Nobody was injured. Claimant reported the incident to the owner. The restaurant stopped using the fryer, and the owner did not repair it before claimant's employment ended.

(4) Other equipment in the restaurant did not function properly, including some of the headsets, a smoothie machine, and training software for the computer. The employees' uniforms were old and stained. The malfunctioning headsets and smoothie machine did not pose a health or safety risk.

(5) On February 12, 2014, claimant told the district manager he planned to quit on February 28, 2014. At the same time, claimant asked for two weeks of paid vacation. The employer denied claimant's request. Claimant did not yet qualify for paid vacation from the employer. Claimant did not tell the employer he wanted time off from work due to medical reasons.

(6) On March 2, 2014, claimant quit work because the employer had not repaired equipment in the restaurant, and because he believed his work schedule caused him to have migraine headaches.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ and conclude 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 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 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 migraine headaches, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for his employer for an additional period of time.

Claimant quit work, in part, because he experienced migraine headaches he attributed to his work schedule. Rather than quitting, claimant had the reasonable alternative of asking his employer if he could change his schedule for a medical reason. The employer's district manager testified that the employer expected claimant to work 50 hours per week and to report to work at 9:00 a.m. However, within those parameters, claimant was permitted to make his own schedule. Claimant told the employer he preferred to arrive at work at 11:00 a.m., but the record does not show that claimant asked to change his schedule due to his migraine headaches. The district manager testified that claimant asked to report to work later so he could help care for his grandchild in the morning. Transcript at 28. Claimant testified that he asked for two weeks paid leave from work to address his health issue. Transcript at 14. The employer denied claimant's request. However, the record does not show that claimant told the employer his request was for medical reasons, and claimant was not yet eligible for paid vacation. Moreover, claimant requested the paid leave at the same time he gave notice he was quitting. Claimant did not show that requesting a schedule change based on his medical condition or taking an unpaid leave of absence before he gave notice to quit would have been futile. A reasonable and prudent person having the characteristics and qualities of a person who has migraine headaches, would not have quit work under the circumstances claimant described.

Claimant also left work, in part, because the employer did not repair some equipment in the workplace. The only equipment failure claimant identified that posed a health or safety risk was the malfunctioning fryer. The record does not show that the employer failed to maintain the fryer, but, rather, that the fryer was not repaired correctly. The employer did not require employees to use the faulty fryer after it exploded, so it posed no further risk to them. The record does not show that the unrepaired headsets and smoothie machine, or stained uniforms, created workplace hazards. Claimant testified that the poor

equipment decreased productivity. Transcript at 40. Claimant did not show that the perceived decrease in productivity constituted a situation of such gravity that a reasonable and prudent person having the characteristics and qualities of a person who has migraine headaches had no reasonable alternative but to leave work on March 2, 2014.

Claimant voluntarily left work without good cause. Claimant is disqualified from receiving unemployment insurance benefits on the basis of his work separation.

DECISION: Hearing Decision 14-UI-17431 is affirmed.

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

DATE of Service: June 24, 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 court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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