

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1312

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On June 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 18874). Claimant filed a timely request for hearing. On July 16, 2014, ALJ Clink conducted a hearing, and on July 24, 2014 issued Hearing Decision 14-UI-22168, affirming the Department's decision. On August 4, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. EAB considered claimant's written argument to the extent it was based on information received into evidence at the hearing.

FINDINGS OF FACT: (1) ADP Totalsource Co. XXII, Inc. employed claimant from March 22, 2012 to May 22, 2014 as a part time groundskeeper at an apartment complex managed by the employer.

(2) Claimant's job duties included picking up litter and cleaning the barbeque grills at the apartment complex. Claimant had reduced vision that could be corrected by ordinary eyeglasses, but did not purchase eyeglasses. However, claimant was able to perform his job duties correctly without eyeglasses.

(3) In February 2014, the employer gave claimant a verbal warning because he failed to pick up litter and clean the grills properly. Claimant attributed his poor job performance to his reduced vision. Following the verbal warning, claimant performed his duties correctly for approximately one month.

(4) On May 22, 2014, the employer gave claimant a verbal warning because he failed to clean the barbeque grills correctly at the apartment complex. Claimant told his supervisor he had difficulty completing his work due to his reduced vision. Claimant's supervisor told claimant he could perform his duties or resign. Claimant resigned.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude claimant voluntarily left work without good cause.

In written argument, as at hearing, claimant asserted that he was discharged. However, the work separation is a discharge only if the employee is willing to continue to work for the employer for an additional period of time but is not allowed to do so by the employer. OAR 471-030-0038(2)(b) (June 29, 2009). If the employee could have continued to work for the employer for an additional period of time, the work separation is a quit. OAR 471-030-0038(2)(a). In this case, claimant could have worked for the employer for an additional period of time if he had agreed to perform his duties. The work separation therefore is a quit, and not a discharge.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of 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" typically is defined 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). For an individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR §1630.2(h)) good cause for voluntarily leaving work is such that a reasonable and prudent person with the characteristics and qualities of such individual, would have no reasonable alternative but to leave work. Both standards are 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 testified he quit work because his declining eyesight made it "increasingly difficult" for him to complete his duties according to the employer's expectations, (Audio Record ~ at 23:04 to 23:13), and he was unwilling to continue working if the employer would not "let up on him" about the quality of his work (Audio Record ~ at 21:13 to 21:36). However, the record shows claimant was able to meet the employer's work performance expectations if he wanted to do so. The employer's manager testified that claimant improved his work performance after the employer reprimanded him, and "did great" for approximately one month, but stopped performing his work correctly again in May 2014. Audio Record at ~ 31:40 to 32:14. Claimant testified that he was able to perform his job duties when he "really wanted to," and failed to show the employer's performance expectations were so onerous that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

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

DECISION: Hearing Decision 14-UI-22168 is affirmed.

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

DATE of Service: September 9, 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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