

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1734

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On September 29, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 73814). Claimant filed a timely request for hearing. On October 28, 2014, ALJ Lohr conducted a hearing in which the employer did not participate, and issued Hearing Decision 14-UI-27749, affirming the Department's decision. On November 4, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Gordon Trucking Inc. employed claimant as a semi-truck driver from April 23, 2013 to June 28, 2014.

(2) Prior to June 28, 2014, the employer allowed claimant to take three days off from work due to stress and anxiety after the trailer repeatedly "dropped" off the semi-truck claimant was driving. Exhibit 1. Claimant agreed to return to work if the employer allowed him to have someone ride in the truck with him to reduce his stress and anxiety. The employer allowed claimant to have his girlfriend ride in his truck, and claimant returned to work for the employer.

(3) While driving a truck for the employer on June 28, 2014, claimant hit a log that had fallen from a pickup truck or trailer in front of him, damaging claimant's front bumper. Claimant was upset and drove his vehicle to the employer's premises. Claimant told a safety employee that he should not be driving trucks anymore and did not want to place himself or others at further risk. The employer offered to allow claimant to drive the same route each day to reduce his stress and anxiety. Claimant refused the offer and quit work.

(4) In October 2014, claimant began seeing a psychologist for counseling regarding his anxiety issues.

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” 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). For an individual with a permanent or long-term “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.¹ *Id.* Both standards are objective. See *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 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.

Claimant quit work due to the stress and anxiety he experienced after hitting a log that had fallen from a pickup truck or trailer in front of him, damaging his front bumper. However, claimant did not assert or show that his anxiety was a permanent or long-term condition, and therefore was required to show that no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have continued to work for his employer for an additional period of time. Rather than quit work, claimant could have requested a leave of absence from work to address his anxiety issues, as he did after he quit work. At hearing, claimant asserted that requesting a leave of absence would have been futile because the employer would not have granted such a request. Audio Record at 25:00. However, the employer allowed claimant three days off from work due to stress and anxiety after the trailer repeatedly “dropped” off the semi-truck claimant was driving. The employer also allowed claimant to have his girlfriend to ride in the truck with him to reduce his stress and anxiety. The employer also offered to allow claimant to drive the same route each day to further reduce his stress and anxiety. The record therefore shows that the employer took steps to accommodate claimant’s problems; accordingly, the evidence does not support claimant’s assertion that requesting a leave of absence to address his anxiety issues would have been futile. Claimant thus failed to establish that he had no reasonable alternative but to quit when he did.

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

DECISION: Hearing Decision 14-UI-27749 is affirmed.

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

DATE of Service: December 15, 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

¹ 29 C.F.R. §1630.2(h) defines “physical or mental impairment,” in relevant part, as any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.