

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1833

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 10, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 145235). Claimant filed a timely request for hearing. On November 7, 2014, ALJ Vincent conducted a hearing, and on November 14, 2014 issued Hearing Decision 14-UI-28757, affirming the Department's decision. On December 1, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Sheraton Portland Airport Hotel employed claimant as a housekeeper from August 28, 2014 to September 2, 2014.

(2) In approximately 1994, claimant suffered injury to her L4 and L5 vertebrae. Thereafter, she experienced pain and impairment from that injury.

(3) Claimant worked approximately 40 hours between August 28th and September 1st. After leaving work on September 1st, claimant's back "went out." Audio Recording at ~6:13. Her back had swelling, she experienced severe pain, had difficulty walking and moving, and could not bend over. *Id.* at ~13:35.

(4) On September 2, 2014, claimant was not scheduled to work. She experienced difficulty getting out of bed. She called her supervisor and left a message quitting her job, stating that the job was too demanding and she was not going to be able to come back. *Id.* at ~13:15, 23:32.

(5) Prior to quitting work, claimant never told the employer that she had pain because of her work or that her work aggravated a pre-existing back injury. Claimant never asked the employer to alter her duties to accommodate her physical condition.

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

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she 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 a back injury from approximately 1994, 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 her employer for an additional period of time.

Claimant had a pre-existing back injury, and experienced pain and impaired mobility because her duties as a housekeeper aggravated her injury. However, she never notified the employer about her pre-existing injury or back pain, and never asked the employer to alter her duties to alleviate the symptoms and pain she felt as a result of some of her job duties. A reasonable and prudent person of normal sensitivity suffering from a long-term or permanent back injury would not conclude she had no reasonable alternative but to quit work unless she had first, at a minimum, notified the employer of her condition and given the employer the opportunity to respond. Because claimant quit without doing so, she did not establish that she had no reasonable alternative but to quit when she did.

Claimant quit work without good cause. Claimant is disqualified from receiving unemployment insurance benefits because of her work separation until she has earned four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 14-UI-28757 is affirmed.

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

DATE of Service: January 13, 2015

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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