

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0048

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On November 20, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 73014). Claimant filed a timely request for hearing. On January 9, 2015, ALJ M. Davis conducted a hearing, and on January 12, 2015, issued Hearing Decision 15-UI-31648, affirming the administrative decision. On January 20, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Advantage Sales and Marketing employed claimant as a part-time sales specialist from September 30 through October 19, 2014. The position required claimant to demonstrate products to shoppers in retail stores.

(3) In October 2013, claimant broke his femur in an automobile accident. Claimant suffers chronic pain as a result of this injury, and his left leg is shorter than his right leg. Claimant continues to receive physical and other therapies to address the effects of this injury. As a result of this injury, claimant is able to walk or sit for no more than one to one and one-half hours before he must change his position and stretch his leg in order to alleviate his pain.

(4) The employer expected that claimant would complete 15-20 hours of online training, and then train with another employee in a retail store. After completing some of the online training, claimant reinjured his leg. Because of this injury, claimant was unable to alternate periods of standing and sitting. Audio Record at 28:232. He concluded that he would be unable either to complete the in-store training or perform the duties of the job.

(5) On October 5, 2014, claimant sent an email to the employer's regional sales manager in which he explained that he had reinjured his leg and would be unable to participate in the in-store training. Also on October 5, claimant spoke with the sales manager by telephone to explain that he was unable to complete the training. The sales manager sent claimant a form to request a leave of absence. Claimant did not request a leave of absence because he believed his time could be better spent looking for work as

a manager in the insurance industry, work that claimant had performed before he was injured and that t paid more than the work offered by the employer. .

(6) On October 19, 2014, claimant notified the regional sales manager that he was voluntarily leaving his position.

CONCLUSION AND REASONS: Claimant voluntarily left work without good cause.

We begin by considering the nature of claimant’s work separation. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

Claimant asserted that he did not believe he voluntarily left his job with the employer because when he talked with the employer’s sales manager on October 5, 2014, she told him that he would “have to resign.” Audio Record at 10:57. Claimant testified, however, that he “determined on my own that this was not the right job for me” and, as a result, did not to begin the in-store training. Audio at 10:16 and 13:17. Because the employer had work available for claimant that he chose not to accept, claimant’s work separation was a voluntary leaving.¹

We next consider whether claimant had good cause for quitting his job. 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). The injury claimant suffered in October 2013 – a broken femur that resulted in a shortened leg and chronic pain – constituted 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 established that the pain and physical limitations caused by his original injury and the re-injury he suffered constituted a grave situation. Claimant had reasonable alternatives to quitting his job, however. Claimant could have accepted the offer of a leave of absence, to allow time for his re-injury to heal. Once the re-injury healed, claimant could have attempted to perform the job and asked the employer for the necessary accommodations to do so. For example, claimant could have asked that the employer allow him to alternate periods of sitting and standing, and allowing him to take breaks to perform stretching necessary to alleviate his pain. Because claimant never sought any accommodations for his injury, he failed to show that none would have been provided. Because claimant never explored

¹ Claimant also testified that he did not believe he quit a job because he did not believe that the online training in which he participated constituted work. “Work” is defined as “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a) (August 3, 2011). By completing at least some of the online training offered by the employer, claimant had a continuing, though brief, relationship with the employer and therefore performed “work” for it.

any alternative to quitting his job, he failed to demonstrate that a reasonable and prudent person who suffered from the type of impairment from which he suffered faced a situation so grave that he had no reasonable alternative but to leave work.

Claimant did not have good cause to voluntarily quit work and is disqualified from the receipt of unemployment benefits on the basis of this work separation.

DECISION: Hearing Decision 15-UI-31648 is affirmed.

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

DATE of Service: March 10, 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.

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.