

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0060

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 85933). Claimant filed a timely request for hearing. On January 7, 2015, ALJ Clink conducted a hearing, and on January 9, 2015, issued Hearing Decision 15-UI-31609, affirming the administrative decision. On January 13, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Cleaning Authority employed claimant as a residential housecleaner for seven hours on November 3, 2014.

(2) Claimant had back surgery seven years ago, and has three fused discs. As a result of this condition, claimant has restricted mobility. When claimant accepted work as a housecleaner for the employer, she hoped she would be able to perform the duties of the job in spite of her back problems and wanted to try doing so to avoid being unemployed.

(3) After working seven hours for the employer, claimant realized that she was physically unable to perform most of the essential duties of the job and quit. Claimant could not bend and was unable to lift and carry the equipment needed to do her work. The only work she was able to perform for the employer was to clean counters and dust objects and furniture at waist height or above.

(4) Claimant did not ask the employer if it could accommodate her physical impairments. Claimant had previously worked many years as a housecleaner. Based on her experience, she believed that the employer would be unable to offer any reasonable accommodation because she was physically able to perform only a few of the duties a house cleaner is expected to perform. The employer had no work other than housecleaning available for claimant.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that claimant voluntarily left work with 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 fused spinal disks, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h).¹ 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.

In Hearing Decision 15-UI-31609 the ALJ concluded that claimant “left work because of the working conditions. The claimant’s decision to leave work after seven hours was not such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work.” Hearing Decision 15-UI-31609 at 4. The ALJ also concluded that claimant failed to give the job a “fair trial,” because rather than quitting, she the reasonable alternative of asking the employer to accommodate her physical limitations. We disagree with the ALJ’s reasoning and conclusion.

After working seven hours for the employer, claimant found that she was physically unable to perform the majority of the duties of the job she had been hired to do. Claimant therefore faced a grave situation due to the physical limitations caused by her back condition. Contrary to the ALJ’s assertion, we conclude that it would have been futile for claimant to attempt to give the job a “fair trial” by asking the employer for work that accommodated her physical abilities. Claimant knew, based on her many years of experience as a housecleaner, that she could perform very few of the duties the position required. The employer had no work other than housecleaning available for claimant. Based on this record, we conclude that no reasonable and prudent person who suffered from back problems caused by fused discs would have continued to work for the employer for any additional period of time.

Claimant voluntarily quit work with good cause and is not disqualified from the receipt of unemployment benefits based on this work separation.

DECISION: Hearing Decision 15-UI-31609 is set aside, as outlined above.

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

DATE of Service: February 25, 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

¹ Under 29 CFR § 1630.2(h)(1), a physical impairment includes “any physiological disorder or condition” affecting the “musculoskeletal body system.”

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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