

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0113

Reversed
No Disqualification

PROCEDURAL HISTORY: On December 24, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 92020). Claimant filed a timely request for hearing. On January 28, 2015, ALJ Vincent conducted a hearing, and on January 29, 2015 issued Hearing Decision 15-UI-32567, affirming the Department's decision. On February 6, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) All N One Sweeping employed claimant from November 4, 2014 to November 24, 2014 as a general laborer.

(2) Claimant had permanent physical limitations due to the effects of a ruptured lumbar disc in 1978, a right shoulder injury in or about 1995, and a torn right meniscus in 2012. When claimant accepted the position with the employer, he believed he could perform the duties of the job.

(3) The employer initially assigned claimant to walk and carry and operate a 40-pound backpack blower to clear parks and commercial properties. The work caused claimant back pain. On November 11, 2014, claimant informed the owner about the problems he was experiencing operating the backpack blower.

(4) The owner assigned claimant to drive a sweeper vehicle. Claimant experienced pain and numbness in his leg while driving, and in his shoulder from repeatedly pulling himself into the vehicle. Claimant told his supervisor he experienced pain from operating the sweeper vehicle.

(5) On November 23, 2014, a supervisor instructed claimant to work a twelve-hour shift operating the backpack blower and using the sweeper vehicle. Claimant realized he was unable to perform the duties of the job without pain.

(6) On November 24, 2014, claimant quit because the work aggravated his injuries and he was not able to perform the duties of the job without pain.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude claimant voluntarily left work with 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” 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 permanent back, shoulder and knee injuries, permanent or long-term “physical or mental impairments” as defined at 29 CFR §1630.2(h). A claimant with those impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for his employer for an additional period of time.

In Hearing Decision 15-UI-32567, after finding that claimant did not inform the employer of his difficulties performing the work after he was reassigned to the sweeper vehicle, the ALJ concluded claimant quit work without good cause, reasoning that he could have continued to work while addressing his concerns further with the employer.¹ We disagree.

Claimant quit his job because the work aggravated his back, shoulder and knee injuries and caused him pain. Claimant told the owner he was unable to carry a backpack due to pain from his medical conditions. The owner then reassigned claimant to operate a sweeper vehicle, allowing claimant to sit while working. However, claimant experienced pain from operating the sweeper as well, and informed his supervisor about his physical concerns. The employer did not offer claimant different job duties, but instead assigned claimant a twelve-hour shift operating the backpack and the sweeper. The record does not show the employer had other work duties claimant was able to perform. Based on this record, we conclude that no reasonable and prudent person with permanent back, shoulder and knee injuries would have continued to work for the employer.

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-32567 is set aside, as outlined above.²

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

DATE of Service: March 31, 2015

¹ Hearing Decision 15-UI-32567 at 2.

² This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

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 Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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