

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0118**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 15, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 81447). The employer filed a timely request for hearing. On January 29, 2015, ALJ Frank conducted a hearing, and on January 30, 2015 issued Hearing Decision 15-UIB-32696, reversing the Department's decision and concluding claimant voluntarily left work without good cause. On February 9, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Fred Meyer Stores, Inc. employed claimant as a cashier from October 9, 2014 until November 23, 2014.

(2) When claimant was hired, she had a history of back problems, although she did not know the source of those problems. When claimant was hired, she had not recently experienced any pain in her back or her legs and was not receiving medical treatment.

(3) While working as a cashier for the employer, claimant stood in a check-stand and remained on her feet for approximately five or six hours at a time. Claimant began to experience pain in her legs and back while working, which she attributed to the length of time she was required to remain standing.

(4) Sometime shortly before November 14, 2014, claimant consulted with a chiropractor about the pain she was experiencing. The chiropractor told her that he thought the pain resulted from an injury to her back several years before when she appeared to have sustained a fractured a vertebra and from which she had developed bulging spinal discs. The chiropractor told claimant that he did not know how long it would be before his treatment alleviated her pain.

(5) On November 14, 2014, claimant's chiropractor gave her a note excusing her from work until November 15, 2014. The note stated that as of November 15, 2014 claimant was released to return to her normal work activities without restriction. Audio at ~21:46. Claimant gave that note to the employer and returned to work on November 15, 2014. On November 17, 2014, claimant's chiropractor gave her a note excusing her from work until November 22, 2014. The note stated that as of November 22, 2014 claimant was released to return to her normal work activities without restriction. Audio at ~21:46. Claimant gave that note to the employer.

(6) On November 21, 2014, claimant called the employer's human resources manager and left a message stating that she needed to speak with her. Claimant did not report for her scheduled shifts on November 22, 2014 and November 23, 2014. On November 23, 2014, when she was back at work, the human resources manager returned claimant's phone message. Claimant told the manager that she could not work given her physical condition and that she was quitting work immediately. The human resources manager told claimant that she could apply to work again for the employer when her physical condition improved. Audio at ~11:50. Claimant did not return to the workplace after November 23, 2014.

(7) Claimant continued to see her chiropractor after November 23, 2014. Sometime after November 23, 2014, the chiropractor recommended that claimant consult with a physician who had an orthopedic specialty to receive treatment that complemented that which he could provide. Sometime before January 2015, an orthopedic physician initiated a therapy that blocked the pain that claimant experienced in her legs and back when she stood for extended periods. That therapy "helped tremendously" and by January 2015, claimant was ready to return to customer service work that required her to stand and was released to work without any restrictions. On approximately January 22, 2015, claimant went to the employer's human resources manager to ask for a position with the employer, working again as a cashier. Audio at ~11:47.

**CONCLUSIONS AND REASONS:** 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 back problems resulting from a fractured vertebra and bulging discs, which are apparently 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 her employer for an additional period of time.

The accuracy of claimant's testimony that she was required to quit work on November 23, 2014 due to the uncontrolled pain she was experiencing was belied both by the evidence that she presented and did not present. Although claimant was receiving medical treatment for her pain, she never testified that a health care provider actually advised her to quit her job with the employer for health reasons. Audio at ~6:33; *see also* Audio at 24:36. As well, claimant saw the chiropractor only four days before she

decided to quit, and rather than recommending that claimant should leave work at that time, the chiropractor's note stated that he was releasing claimant to work without any restrictions as of November 22, 2014. Audio at ~ 21:46. The chiropractor's evaluation suggests that claimant quit work due to a negative over-reaction about her own prognosis, and before seeking her chiropractor's or another competent health care provider's opinion about whether her pain might be sufficiently alleviated to allow her to perform her work or whether pursuing other medical alternatives was likely futile. A reasonable and prudent cashier, exercising ordinary common sense, and who had a history of back problems, would not have decided that she needed to quit work without the recommendation of her chiropractor or another medical professional that she do so, or before concluding, based on objective evidence, that no reasonable medical alternatives were available to alleviate the pain that was interfering with her ability to work. That claimant's condition was sufficiently improved to allow her to return to cashiering work only five weeks after she quit work suggests most strongly that she failed to pursue reasonable medical alternatives before deciding to quit, such as consulting with an orthopedic specialist. Claimant failed to present evidence supporting that, at the time she left work, it was reasonable for her to conclude that additional medical interventions for her condition was likely futile.

Claimant did not show that she had good cause for leaving work when she did. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Hearing Decision 15-UI-32696 is affirmed

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

**DATE of Service:** March 24, 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 Court of Appeals website at [courts.oregon.gov](http://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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