

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0228**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On January 12, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 112849). Claimant filed a timely request for hearing. On February 17, 2015, ALJ K. Monroe conducted a hearing at which the employer did not appear, and February 19, 2015 issued Hearing Decision 15-UI-33764, affirming the Department's decision. On February 26, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Rolling Frito-Lay Sales, LP employed claimant as a route salesperson from May 30, 2006 until June 22, 2014.

(2) Claimant's job entailed, among other things, unloading merchandise from his truck and stocking the merchandise on customers' display shelves. The job was physically demanding and required repetitive bending, stretching and kneeling. To adequately meet the needs of his customers, claimant worked an average of fifty to sixty hours per week.

(3) In 2011, claimant thought that he sustained an abdominal hernia. In 2012, claimant had a physical examination as part of the process to renew his commercial driver's license (CDL). The examining provider diagnosed claimant with a hernia, but issued the medical certification needed to renew the CDL. In 2014, claimant had another physical to renew his CDL. The examining provider noted that claimant still had a hernia, but issued the medical certificate finding that claimant was physically qualified for the renewal of his CDL. Neither of these medical providers advised claimant that he needed to stop working due to his hernia and the physical demands of his job. One or both of the providers generally recommended to claimant that he squat rather than bend when he needed to reach items that were near the ground or floor and that he modify the way that he performed other physical activities to avoid using his abdominal muscles.

(4) After 2011, claimant experienced pain if he overused his abdominal muscles or strained the herniated area. Claimant did not consult with a medical professional for treatment of his hernia, or seek recommendations for lessening the impacts of the hernia on his physical activities. Although claimant saw a chiropractor after 2011, it was not to treat the hernia. Claimant purchased and used a hernia belt to support the herniated area when he was at work. Claimant discussed his condition with acquaintances who also had hernias, and he decided that he did not want to have surgery to repair the hernia based on their experiences so he did not consult with a physician. Claimant preferred to wait to see if the hernia would naturally heal. After 2011, claimant was able to perform the duties of his job, but he "had to be careful how" he did so. Audio at ~16:20. By 2014, claimant thought that he was working too many hours and that those work hours "started to drive [him] into the ground." Audio at ~10:06. Despite these complaints, claimant was able to and did continue to work.

(5) Sometime in early 2014, claimant mentioned to his immediate supervisor that he had been diagnosed with a hernia and that his workload was exhausting him. Claimant did not request a reduction in his workload or tell the supervisor that his hernia did not allow him to perform any of his job duties. Claimant also mentioned at least once to the branch manager that his workload was exhausting to him, but did not ask that it be lessened or that he be assigned to a route that required fewer hours or was less physically demanding. By 2014, claimant thought that he needed time away from the physical demands of his job to allow his hernia to heal naturally and to restore his physical well-being.

(6) Sometime in April or May 2014, the employer announced that it was restructuring the routes of the salespersons, and the salespersons were required to bid on the routes that they wanted based on seniority. The employer offered to some senior salespersons, including claimant, the option of a cash buyout or severance arrangement if they were willing to leave employment. Although claimant had sufficient seniority to successfully obtain a route, he decided to take the option of the buyout and to leave work. Claimant decided that June 22, 2014 was going to be his last day.

(7) On June 22, 2014, claimant voluntarily left work.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without 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 an abdominal hernia, 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 testified that he decided to take the employer's severance package and leave work because his work hours had become too demanding, especially in light of his hernia and his perceived need to take

time away from work "to get my body to heal up." Audio at ~13:12. While claimant described certain limitations from his hernia, it did not appear from his testimony that the hernia was so debilitating or painful that he became unable to perform his job. At most, claimant stated that the hernia required him "to be more careful" in his physical activities. Audio at ~16:23. That claimant relied on his own efforts to deal with the impacts of the hernia, rather than seeking medical treatment or advice, strongly suggests that the untreated hernia did not pose a grave obstacle to claimant's continuing to work. In this respect, it is significant that the medical providers who performed claimant's physical examinations for the renewal of his CDL certified that he was physically able to drive a truck despite the hernia and did not advise him to consider leaving work due to the hernia. While claimant might have thought that he needed to limit his physical activities to such an extent that he had to stop all physically demanding work activities to allow the hernia to heal naturally, as he preferred, it does not appear that claimant reasonably exhausted all alternatives before deciding that he could only quit work. A reasonable and prudent employee, exercising ordinary common sense, who wanted to remain employed, would not have concluded that he needed to quit work due to his hernia or exhaustion from trying to perform his work with the limitation imposed by the hernia, before he consulted with a knowledgeable medical professional about whether there were any treatment options that would reasonably relieve his exhaustion and physical limitations and allow him to continue working. A reasonable and prudent employee, exercising ordinary common sense, also would not have concluded that he needed to quit work due to an untreated hernia or exhaustion arising from it before specifically inquiring of his supervisor, the branch manager or some other employer representative whether there were any workplace accommodations that could be made available to him, including a sales route which required fewer hours and lesser physical demands. On this record, absent evidence that pursuing such steps would have been futile under the circumstances, claimant did not demonstrate that he had good cause to leave work when he did.

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

**DECISION:** Hearing Decision 15-UI-33764 is affirmed.

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

**DATE of Service:** April 16, 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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