

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0488

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 30, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 140730). Claimant filed a timely request for hearing. On April 16, 2015, ALJ Shoemake conducted a hearing, and on April 24, 2015 issued Hearing Decision 15-UI-37495 affirming the Department's decision. On April 29, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) NVHG OR Hotel Operator, LLC employed claimant as a supervisor and cook at one of its restaurants from July 21, 2011 until February 20, 2015.

(2) The restaurant at which claimant worked was located in central Oregon at Bravada Ranch, a high-end destination resort. The employer's busy months were March through October and the slow months were November through February. Claimant's job was stressful and fast-paced during the employer's busy months.

(3) On November 6, 2014, claimant experienced what he thought was an anxiety attack while working. He was able to complete his shift, however. Later, claimant consulted a physician and was told that he had experienced a heart attack. The physician stated that the heart attack appeared to have been stress-induced and prescribed a medication to control claimant's blood pressure and nitroglycerin tablets for him to take if his heart rate increased. The physician instructed claimant to call her or report to a hospital emergency department if he had to take more than one nitroglycerin tablet during an episode of accelerated heart rate. After the heart attack, claimant returned to full-time work. On approximately December 6, 2014, claimant saw the physician for a thirty-day follow-up after the heart attack and was told that his recovery was progressing well and his blood pressure was in the acceptable range. No further appointments were scheduled.

(4) After approximately December 6, 2014, claimant did not make any more appointments with the physician. Three times between December 6, 2014 and February 2015, claimant experienced episodes

when he needed to take one nitroglycerin tablet to slow his heart rate. Claimant never needed to take a second tablet and never needed to notify the physician or report to an emergency department.

(5) By early 2015, claimant decided that he could not work for the employer after its busy season started in March 2015. Claimant thought that he needed to leave work “just in case something else happened” with his heart condition after the employer’s business picked up in the busy months. Audio at ~10:17, ~10:30. Claimant did not consult with his physician to determine whether the physician thought he needed to leave his job because of his heart condition. Claimant decided he was going to move to Arizona, where his family lived, in the event he needed assistance if his heart condition worsened. None of claimant’s family lived in Oregon.

(6) On approximately February 6, 2015, claimant gave the employer notice that he was going to leave work effective February 20, 2015. The reason claimant cited for his departure was that his move to Arizona to be nearer to his family.

(7) After claimant’s heart attack on November 6, 2014 until February 20, 2015, claimant did not have any episodes of high blood pressure, a heart rate that could not be slowed by one nitroglycerin tablet or any other symptoms indicating that he was undergoing another heart attack. Between those dates, claimant worked his usual schedule without restrictions or accommodations.

(8) On February 20, 2015, claimant voluntarily left work. Claimant moved to Arizona on approximately February 24, 2015.

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 a heart condition, 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.

It appears that after claimant experienced the heart attack in November 2014, he returned to his usual work schedule and the blood pressure medication and nitroglycerin tablets he was prescribed successfully averted further cardiac incidents. It can be inferred that claimant’s cardiac condition was controlled and stable after the heart attack through the day that he left work since he did not think that he needed to seek further medical treatment or evaluation. Claimant also did not assert that his physician restricted his personal or work activities at any time after the heart attack, and it can be inferred that the physician approved him to engage in full, unrestricted activities after the heart attack and did not change that authorization. It further appears no physician or medical professional advised claimant to curtail his work activities, either generally or during the employer’s busy months, to safeguard his health, and that

claimant did not seek a medical evaluation to determine if it was reasonable or necessary for him to leave work in light of his cardiac condition. While it is understandable that claimant would want to take actions that would reduce the risk of another cardiac event, claimant's concerns that "something else would happen" if he continued to work during the employer's busy season were not objectively based. Audio at ~10:17. The record is thus devoid of evidence that claimant's cardiac condition was unstable, or that performing some of his usual work activities caused him to experience cardiac symptoms that were not successfully brought under control without additional interventions. Nor did claimant show any other circumstances that reasonably caused him to believe that his health would be jeopardized if he continued to work for the employer. Based on this lack of evidence, we conclude that claimant did not meet his burden to demonstrate that his stated concerns over his cardiac health were an objectively grave reason to leave work. Under the circumstances shown in this record, a reasonable and prudent employee with a cardiac condition, exercising ordinary common sense, would not have concluded that he needed to leave work based on vague concerns over his health without the existence of at least some objective factors showing that continuing to work was reasonably likely to jeopardize his health.

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

DECISION: Hearing Decision 15-UI-37495 is affirmed.

Susan Rossiter and J. S. Cromwell;
D. P. Hettle, *pro tempore*, not participating.

DATE of Service: June 22, 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. 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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