

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0648**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On April 23, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 74617). Claimant filed a timely request for hearing. On May 20, 2015, ALJ Logan conducted a hearing, and on May 21, 2015 issued Hearing Decision 15-UI-38865, affirming the Department's decision. On May 28, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that appeared to disagree with some of his hearing testimony and offered new information not presented during the hearing. Claimant did not explain why he did not offer this information at the hearing or otherwise show that factors or circumstances prevented him from doing so as required by OAR 471-041-0090 (October 29, 2006). For this reason, EAB did not consider claimant's new information. EAB considered only information received into evidence at the hearing when reaching this decision.

Although the ALJ admitted Exhibit 1 into the hearing record, he neglected to mark it as an exhibit. Audio at ~5:22; Hearing Decision 15-UI—38865 at 1. Because these documents were readily identifiable based on their hearing description, EAB has corrected this oversight and marked the appropriate documents as Exhibit 1.

**FINDINGS OF FACT:** (1) Postal Express employed claimant as a delivery driver from March 11, 2015 until March 17, 2015.

(2) Before the employer hired claimant, claimant had worked for approximately thirty years in the construction industry. Claimant was accustomed to frequently lifting and moving objects that weighed up to fifty pounds. When claimant worked in construction, he never injured his back by lifting or moving such weights.

(3) When the employer hired claimant, it informed him that he would be required to frequently move or lift objects that weighed up to fifty pounds without work aids. Exhibit 1 at 6. Although claimant was 61 years-old, he thought the physical requirements of working for the employer were within his capacities because he had been able to lift and move similar weights, without injury, over his long career in construction.

(4) On March 16, 2015, claimant made a delivery to one of the employer's customers. Claimant was able to move the items he had delivered into the customer's location without assistance. After claimant completed the delivery, he had difficulty closing the lift gate to his truck. While claimant was adjusting the position of the lift gate, he experienced pain in his back. Claimant attributed the pain to the physical effort it took him to close the lift gate. Despite his discomfort, claimant continued to work on March 16, 2015 and completed all of his deliveries.

(5) On March 17, 2015, claimant reported for work but his back was sore and painful. It took claimant two hours to load the items he was going to deliver that day into his truck. Claimant intended to make his scheduled deliveries. When claimant arrived for make his first delivery, he was unable to lift or move the items he was expected to deliver. Claimant was unable to do so even when he tried to use a hand truck as an assistance device. Claimant discontinued his route and did not attempt to complete the remaining deliveries he was scheduled to make.

(6) On March 17, 2015, claimant contacted the employer and stated that he had problems with the lift gate on his truck and he was quitting work because "the job was too physical for him." Audio at ~15:33. Claimant gave the employer a written note stating he was resigning but not giving any reasons for this decision. Claimant did not tell the employer that he thought he had injured his back at work. Claimant did not ask the employer for time off from work for a medical examination or to allow his back to heal. Claimant did not ask the employer to assign him temporarily to light duty work which was within his capacities until his back healed. The employer had light duty positions available for employees who had physician-authorized work activity restrictions. Claimant did not return to work after March 17, 2015.

(7) On March 20, 2015, a physician evaluated the condition of claimant's back. The physician told claimant that he "sprained his lower back" and had some arthritis in his back. Audio at ~10:13. The physician prescribed physical therapy as an appropriate treatment for claimant. Audio at ~9:50.

**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 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

While the standard for determining whether a claimant had good cause to leave work is modified for a claimant who has a long-term or permanent physical impairment, the evidence in the record does not establish that claimant's back sprain or arthritis on his back were such impairments. *See* OAR 471-030-0038(4). Claimant candidly stated that he never experienced any problems with his back before starting work for the employer, whether from a sprain, arthritis or otherwise. Audio at ~9:36, ~11:16, ~12:30. It cannot be concluded that claimant's problems with his back were long-term or permanent at the time he left work because he had been experiencing them for only one day. Based on claimant's description of his injury as a "back sprain," it is not clear that it was not a temporary condition from which he would heal and recover all pre-existing function after a short period of diminished function. Nor is it clear that the arthritis diagnosed in claimant's back contributed to the pain that claimant experienced on March 16, 2015, or that in the usual course it constituted any impairment in claimant's physical abilities. Claimant did not establish that, more likely than not, his back sprain or his arthritis was a long-term or permanent impairment requiring the application of a modified standard for determining whether he had good cause to leave work.

Claimant testified that he decided to leave work because he thought that the job as a delivery driver was beyond his physical capacities. Audio at 6:55, ~8:45, ~9:07, 9:50. Aside from generally contending that the demands of the job as a delivery driver were more than he could physically handle, claimant cited only his age and his sprained back as specific impediments to his ability to perform that job. However, claimant did not present any evidence that the regimen of physical therapy prescribed by his physician was unlikely to fully heal his back sprain after a relatively short-term course of treatment. While a claimant's age might, as a general proposition, be considered to diminish his physical abilities somewhat, there was no evidence in this case that this claimant's age, alone, precluded him from performing the physical requirements of the job as a delivery driver. From claimant's testimony, it appears that claimant was a very fit, vigorous and physically capable sixty-one year old. Audio at ~11:11, ~12:38. That claimant's back condition was a long-term restriction to his ability to physically perform his job is further undercut by his failure to seek medical evaluation or treatment before he quit work and his failure to present any evidence that a health care professional advised him that he needed to quit work because of his diminished physical capacities. On this record, it is not at all clear that claimant's inability to perform work as a delivery driver was other than a temporary condition and related to a back sprain from which he reasonably was expected to recover after he healed.

Even if claimant was unable to perform his job duties due to his back sprain, a reasonable and prudent employee would have sought medical evaluation and treatment before concluding that he needed to quit work because it was not likely he would recover sufficient function to perform his job. A reasonable and prudent person with a back sprain also would not have concluded that he needed to quit work until he was evaluated by a physician or other health care professional, obtained an evaluation of the restrictions to his job activities that would allow him to continue working in some capacity and asked the employer if light-duty work was available that accommodated those restrictions. Further, a reasonable and prudent person, who did not consult with a health-care professional about an injury to his back would not have concluded that he needed to quit work due to his own impressions of the extent of the injury, or its permanent disabling impact, until he had taken time off from work to determine if he would heal and recover sufficiently to allow him to continue to work. Because claimant did not take the steps of a reasonable and prudent person under the circumstances, claimant did not meet his burden to show that he had no reasonable alternative other than 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-38865 is affirmed.

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

**DATE of Service:** July 20, 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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