

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0816**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On June 26, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 143546). Claimant filed a timely request for hearing. On July 20, 2015, ALJ R. Davis conducted a hearing, and on July 28, 2015 issued Hearing Decision 15-UI-42085, affirming the Department's decision. On July 31, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Pacific Door & Sash, LLC employed claimant from December 6, 2014 until May 20, 2015, last as a door builder.

(2) A warehouse employee was usually responsible for unloading trucks that delivered doors to the workplace. Although it was not one of his primary job duties, claimant occasionally helped unload trucks when the warehouse person was otherwise occupied. Some of these doors needed to be unloaded by hand. The doors weighed 75 to 150 pounds.

(3) Throughout his employment, claimant was generally "strong and healthy." Transcript at 8. In approximately February 2015, claimant thought he "over did it" when he unloaded by hand a delivery of doors. Transcript at 7. Claimant took the over-the-counter drug, Advil, for his discomfort. After February 2015, claimant was regularly taking Advil after he unloaded door deliveries. In late April or early May 2015, claimant "overworked" his back again when unloading a delivery of doors. Transcript at 6. Claimant again took Advil for the discomfort. Claimant did not consult with a health care provider about his condition on either occasion or at any time during the remainder of his employment. Transcript at 7. Sometime in approximately May 2015, claimant told the warehouse manager that he needed help in unloading door deliveries by hand. The manager told claimant he would arrange for someone to assist him. Transcript at 8, 19, 22.

(4) On May 19, 2015, claimant again unloaded a delivery of doors by hand. Although claimant completed the unloading, his back started to hurt. Claimant had not asked anyone to help him unload the delivery because the warehouse person and the delivery person were not available and the warehouse manager was on vacation. After claimant's shift ended, he took Advil and over-the-counter ibuprofen to ease his back symptoms.

(5) The morning of May 20, 2015, claimant's back felt like it was "strained." Transcript at 5. When a customer arrived at the workplace that day to drop off a door, claimant did not want to unload it without assistance. However, claimant did not ask anyone for help. The warehouse person was waiting on another customer in the office and could not immediately assist claimant. The delivery person was out making deliveries and the warehouse manager was still on vacation. Claimant did not want to ask the office manager to arrange for someone to help him because he thought there was the possibility of a "confrontation" with her. Transcript at 9. Claimant perceived that the customer wanted the door unloaded quickly so he could continue on with his day. Transcript at 17; Exhibit 1 at 7. Claimant unloaded the customer's door unassisted.

(6) On May 20, 2015, after unloading the door, claimant sent a text message to his manager, who was still on vacation, to tell him that he was quitting work effective that day. Exhibit 1 at 5, 6. Claimant also told the office manager that he was quitting and, as he left the workplace that day, he commented that "I have had it with [the employer] . . . and raise my wage to \$15.00 an hour or I will not come back." Transcript at 11, 12. Claimant left the workplace and did not return. On May 20, 2015, 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 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 a claimant who has a permanent or long-term mental or physical impairment is allowed a modified standard for showing good cause to leave work, claimant did not demonstrate that his back condition was such an impairment. Claimant testified that his back began to bother him relatively recently, in February 2015. Transcript at 6. Claimant did not seek medical treatment or need prescription medications. Transcript at 7. It was not clear from claimant's testimony that the issues with his back were other than temporary ones from which he would fully heal, particularly since he characterized the problem as "back strain" or "overdoing it." Transcript at 5, 7. Claimant did not meet his burden to show that the condition of his back was a permanent or long-term impairment, and the applicable standard for showing good cause is therefore that of a reasonable and prudent person.

Claimant contended that he left work when he did because he thought he would exacerbate a back injury if he continued to unload doors unassisted from trucks or customers. While claimant asserted that his back was very injured, his back pain was “killing [him]” and his “body couldn’t do it anymore,” his actions flatly contradict these statements. Transcript at 8, 9. On both May 19 and May 20, 2015, he was able to unload doors without any assistance from other employees. On May 20, 2015, he was able to sufficiently relieve his discomfort with over-the-counter medications to report for work and to perform at work and he did not feel the need to consult with a health care professional. That claimant was able to lift unassisted doors weighing between 75 and 150 pounds on those days, and did not thereafter seek medical treatment, strongly suggests that the condition of his back was not so dire that he needed to quit work. Moreover, the description that claimant provided about the injury to his back also suggests that it was most likely a temporary condition from which he would fully recover after he rested his back. However, accepting claimant’s testimony that on May 20, 2015 he was experiencing significant pain in his back, a reasonable and prudent person, exercising ordinary common sense, would not have quit work that day, but would have taken time off from work to rest his back and to learn whether he would recover from the “back strain” or “overdoing it.” Transcript at 5, 7. This alternative should have been reasonably apparent to claimant since he had taken other time off from work before May 20, 2015 due to back issues. Transcript at 32.

Even if claimant was apprehensive about further injuring his back on May 20, 2015, he also did not demonstrate that there were no reasonable alternatives available to him other than unloading doors unassisted that day. The employer had offered to arrange for claimant to have assistance in lifting doors by hand. Transcript at 22, 25. Other than courtesy to the customer, claimant did not offer a good reason why the customer’s door needed to be offloaded immediately on May 20, 2015. A reasonable and prudent person, with an injured back who wanted to remain employed, would not have decided he needed to leave work due to the prospect of lifting a customer’s door unassisted before waiting a reasonable period of time for the warehouse person, who had the principal responsibility for unloading doors, to finish up with his customer and become available to unload the door from the other customer’s vehicle. If the warehouse person was not able to assist in unloading the door, a reasonable and prudent person in claimant’s situation also would not have quit work in lieu of lifting the customer’s door, until he waited a reasonable time for the delivery person to return and provide assistance or waited a reasonable time for the office manager to return to her office so he could ask her to obtain some assistance for him in lifting the door. Because claimant did not take the actions of a reasonable person in pursuing reasonable alternatives in lieu of leaving work and did not show that such alternatives were likely futile, he did not meet his burden to show that he had no alternative other than to quit 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-42085 is affirmed.

Susan Rossiter and J. S. Cromwell.

**DATE of Service:** September 10, 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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