

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0833**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On May 19, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 72554). Claimant filed a timely request for hearing. On June 16, 2015, ALJ Seideman conducted a hearing, and on June 19, 2015, issued Hearing Decision 15-UI-40372, concluding that claimant had good cause to voluntarily quit work. On July 9, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the employer's written argument to the extent it was relevant and based on the record.

**FINDINGS OF FACT:** (1) Goodwill Industries of the Columbia Willamette employed claimant from June 12, 2008 to April 5, 2015. From January 22, 2014 until early July 2014, claimant worked as an e-commerce associate collectibles lister, a job that required him to work at a computer, listing merchandise that the employer sold online.

(2) In early July 2014, claimant's supervisor asked and claimant agreed to work in the employer's shipping and receiving department. Claimant was regularly assigned to work in this department; the work required that he repeatedly lift and move merchandise. Claimant found the work too physically demanding because he suffered back strain as a result of three car accidents in which he had been involved. On July 30, 2014, claimant talked with his supervisor, explained that the shipping and receiving work exacerbated his back problems and asked to return to his regular job as a lister. Claimant's supervisor told him that his work in the shipping and receiving department would be temporary because the employer was hiring more people to work in that department.

(3) From September 2014 through early February 2015, claimant was regularly assigned to work in the shipping and receiving department. In early September and again in late November, 2014, claimant asked that his supervisor return him to his job as a lister. His supervisor responded that the assignment in shipping and receiving was temporary; she asked that claimant “hang in there” because the employer was trying to get more help in this department. Audio at 11:58.

(4) On February 10, 2015, claimant injured his back while lifting and moving merchandise. He reported his injury to the employer and filed a worker’s compensation claim.

(5) On February 13, 2015, claimant consulted a doctor in an occupational health clinic. The doctor restricted claimant from lifting more than 15 pounds, and also restricted the amount of pushing and twisting claimant could perform on the job.

(6) Based on the doctor’s restrictions, the employer assigned claimant work as a lister through the end of March 2015. Sometime during this period, claimant’s worker’s compensation claim was denied on the grounds that claimant’s back problems were the result of the car accidents in which he had been involved. Claimant consulted his doctor, who told him that he should find another job if the employer permanently and regularly assigned him work that required lifting, pushing and pulling.

(7) On April 5, 2015, claimant spoke with his manager and asked if work in the shipping and receiving department would be a permanent part of his job duties. He told the manager that his doctor restricted him from regularly performing work that required lifting, pushing and pulling. Audio 21:57. The manager told claimant that work in shipping and receiving would be a permanent part of claimant’s assignment and that claimant could accept it or resign. Claimant then gave his manager notice that he was resigning his job, effective immediately, because of his medical issues. Audio at 18:04.

**CONCLUSION AND REASONS:** We agree with the ALJ and conclude that claimant voluntarily left work with 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 injured back which constituted a 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 his employer for an additional period of time.

Claimant quit his job because the work the employer assigned him in its receiving and shipping department was too physically demanding and aggravated his back injury. During the first few months claimant was directed to work in shipping and receiving, he told his supervisor the work exacerbated his back problems; his supervisor assured him that the assignment was temporary. After his back was injured and his doctor told claimant he could no longer perform the type of work he was required to

perform in the shipping and receiving department, claimant told his manager about these medical restrictions and asked for a different assignment. The manager told claimant that work in shipping and receiving would be a permanent part of his job duties and that claimant could either accept the assignment or quit. Based on this record, we conclude that no reasonable and prudent person with the type of back injury from which claimant suffered would have continued to work for the employer.

In its written argument, the employer asserted that claimant had reasonable alternatives to quitting: he could have requested a leave of absence or talked with the employer's human resources manager and requested some type of accommodation under the Americans with Disabilities Act (ADA). A leave of absence would have done nothing to address claimant's concern about the employer's unwillingness or inability to assign him work that would not strain his back. In regard to his failure to consult with the employer's human resources manager, the record fails to show that this would have been a reasonable alternative that could have resulted in a different work assignment for claimant. The employer's human resources manager testified that "they move people around – that's sort of the nature of the business," (Audio at 33:45) suggesting that claimant's belief that he "would sit behind the computer all day and not be asked to do anything else" was not feasible or reasonable. Audio at 34:14. We also find reasonable claimant's belief that talking to his supervisor and manager was the appropriate way to attempt to obtain an assignment in accordance with his medical restrictions. Audio at 22:00.

Claimant voluntarily quit work with good cause and is not disqualified from the receipt of unemployment benefits based on this work separation.

**DECISION:** Hearing Decision 15-UI-40372 is affirmed.

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

**DATE of Service:** August 18, 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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