

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1086

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 12, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 103841). Claimant filed a timely request for hearing. On September 8, 2015, ALJ L. Lee conducted a hearing, and on September 9, 2015 issued Hearing Decision 15-UI-44064, affirming the Department's decision. On September 11, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) New Seasons Market LLC employed claimant as an assistant floral manager from September 16, 2011 to July 7, 2015.

(2) The employer typically scheduled claimant to work 7.5 hour day or swing shifts on Tuesdays, Wednesday, Thursdays and Sundays, for a total of 30 hours per week. However, the employer's floral manager often took time off from work due to illness and family issues, and for vacation. When that occurred, claimant was required to perform the floral manager's administrative duties in addition to her own duties, and often had to work alone in the employer's floral department. It took claimant and additional hour per shift to perform the floral manager's administrative duties, meaning that claimant often worked approximately 8.5 hours per shift, up to 34 hours per week, when the floral manager took time off from work. Claimant found the situation stressful.

(3) In or about 2014, claimant began experiencing pain in her hands and arms, which she attributed to work. In summer 2014, a naturopath diagnosed claimant with arthritis due to the overuse of her hands and arms, but determined that claimant did not suffer from rheumatoid arthritis. The naturopath advised to take vitamin supplements and natural anti-inflammatories, including fish oil and cumin, and to reduce the amount of sugar, dairy and gluten in her diet. Claimant followed the naturopath's advice over the following year, and experienced a little less pain in her hands and arms. Claimant did not miss any work due to her medical condition, request a medical leave of absence, or ask the employer to otherwise accommodate her condition.

(4) In or about June 2015, claimant applied for a position as the floral manager in one of the employer's other stores. On July 6, 2015, the employer informed that she had not been selected for the position. That same day, the employer informed claimant that the floral manager was taking two weeks off from work, and that claimant would be required to perform the floral manager's administrative duties, and sometimes work alone in the floral department, during that time.

(5) Claimant quit work because of the stress she experienced covering for the floral manager, and the pain she experienced in her hands and arms.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant quit working for the employer without good cause.

A claimant who quits work is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for quitting when she 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 quit work. OAR 471-030-0038(4) (August 3, 2011). For an individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR §1630.2(h)) good cause for quitting work is such that a reasonable and prudent person with the characteristics and qualities of such individual, would quit. Both standards are objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

Claimant quit work because of the stress she experienced covering for the floral manager, and the pain she experienced in her hands and arms. However, it was not unreasonable for the employer to require claimant to cover for the floral manager, which resulted in claimant working only one additional hour per shift, and increased her hours from 30 to only 34 hours per week. The pain in claimant's hands and arms decreased with medical treatment, and she did not miss any work due to her medical condition, request a medical leave of absence, or ask the employer to otherwise accommodate her condition. The record fails to show that the stress claimant experienced when she was required to cover for the floral manager and the pain she experienced in her hands and arms were of such gravity that no reasonable and prudent person would have continued to work for her employer for an additional period of time. Claimant therefore failed to establish that she quit work with good cause, and is disqualified from the receipt of benefits.

DECISION: Hearing Decision 15-UI-44064 is affirmed.

Susan Rossiter and J. S. Cromwell.

DATE of Service: October 5, 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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