

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1110**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On August 5, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 75613). Claimant filed a timely request for hearing. On September 8, 2015, ALJ R. Davis conducted a hearing, and on September 11, 2015 issued Hearing Decision 15-UI-44249, affirming the Department's decision. On September 21, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the employer's and claimant's written arguments to the extent it was based on the record. Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) Modernfold Northwest employed claimant from December 26, 2007 to July 2, 2015.

(2) Claimant worked as a union carpenter installer until April 17, 2013, when he filed a worker's compensation claim for on-the-job injuries to his left shoulder and forearm. Exhibit 2. Claimant underwent multiple surgeries for his injuries. A "year and a half" before claimant's employment ended, he began performing modified desk work for the employer as a service support worker, with periods of medical leave due to the surgeries. Transcript at 10.

(3) During 2015, claimant and the employer through its insurer began working to settle the worker's compensation claim.

(4) On March 13, 2015, the employer offered claimant a permanent, full time position performing the modified job as a service support worker. Exhibit 2. The position complied with the physical

restrictions outlined by claimant's doctor. *Id.* On March 23, 2015, claimant accepted the service support worker job as offered. *Id.*

(5) Claimant was dissatisfied with the service support worker position because he experienced pain while he worked that he attributed to the characteristics of the job, including the sedentary nature of the job. Claimant asked the employer for a workstation assessment to determine what specific equipment, if any, claimant required to perform his work duties. The employer did not provide the assessment before claimant's employment ended. Claimant complained to the employer about the lack of mobility in the job. The employer advised claimant to take breaks, and assigned him tasks outside the office visiting job sites and doing field training.

(6) On July 2, 2015, claimant learned that a settlement had been reached in his worker's compensation case. Claimant's attorney recommended to claimant that he not report to work thereafter, and claimant assumed he was required to quit. Under the terms of the agreement, claimant would receive a lump sum payment and release the employer from further liability for his injuries. The terms of the agreement did not address claimant's working conditions or require claimant to resign from his job. Nor did claimant have a side agreement with the employer requiring him to resign. Claimant did not review or sign the settlement agreement until July 16, 2015.

(7) If claimant had not left work, the employer would have allowed him to continue working and would have continued the process to provide accommodations for claimant's injury.

**CONCLUSIONS AND REASONS:** We agree with the ALJ and conclude 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.

Claimant testified that he quit work on the day he settled his worker's compensation claim based on his lawyer's advice and because he assumed he had to quit. Transcript at 5-6. Claimant did not review or sign the final settlement agreement until two weeks after he quit. He had the reasonable alternative of confirming, rather than assuming, the terms of the settlement agreement before he quit. Claimant failed to show that no reasonable and prudent person who wanted to continue working for the employer would have confirmed the terms of the settlement agreement before permanently severing his employment relationship.

Claimant also asserted that he quit, in part, because the service support worker job was delaying his recovery from his injuries, due in part to the employer's failed to provide accommodations to improve his working conditions. Transcript 7-9. However, claimant's testimony that he quit for this reason lacks

credibility due to the timing of his resignation, and his failure to assert his health as a reason for quitting until it was apparent at hearing that he was not required to quit to accept the worker's compensation settlement. Moreover, claimant had performed the service support worker duties for more than a year, and, in March 2015, accepted the employer's offer to remain in that position permanently. Although claimant was understandably dissatisfied with the employer's slow response to his request for a workstation assessment, the preponderance of the evidence does not show that the employer disregarded claimant's requests for accommodation or that continuing to participate in the reasonable accommodation process would have been futile. Absent such a showing, claimant failed to show that he had no reasonable alternative but to quit working for the employer when he did.

We therefore conclude that claimant quit work without good cause. Claimant is disqualified from the receipt of unemployment benefits based on this work separation.

**DECISION:** Hearing Decision 15-UI-44249 is affirmed.

Susan Rossiter and J. S. Cromwell.

**DATE of Service: October 26, 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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