

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1211**

*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 # 142638). Claimant filed a timely request for hearing. On September 21, 2015, ALJ Shoemake conducted a hearing, and on September 24, 2015 issued Hearing Decision 15-UI-44814, affirming the Department's decision. On October 8, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted two written arguments. Claimant failed to certify that he provided a copy of either argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Both arguments also contained information that was not part of the hearing record, and claimant failed to show that factors or circumstances beyond his reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). For this reason, EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) All That Glitters Jewelry-Loans employed claimant as salesperson from September 12, 2014 until June 22, 2015. When the employment ended, the employer was cross-training claimant to also perform duties as a pawnbroker.

(2) Sometime before the employer hired claimant, claimant had open heart surgery. While claimant was working for the employer, he developed problems with his Achilles tendon for which he was seeing a physician.

(3) On March 6, March 16 and April 20, 2015, claimant told his manager that his work schedule sometimes did not allow him to take rest and meal breaks. During these discussions, claimant also mentioned to his manager that might need to take some time away from work for medical reasons. When claimant brought up his possible need to take time off from work, he did not provide specifics and

did not tell the manager that he expected to have surgery on his Achilles tendon. The manager knew only that claimant was seeing a physician for problems with his tendon. Claimant did not tell his manager the specific dates he needed off because he did not know them at the time. The manager told claimant that he would need to complete a form requesting the time off and listing the days he would be away. Claimant was aware that the employer's vacation request form required thirty days' advance notice, and he assumed the employer would not allow him to take time off for medical reasons without thirty days' advance notice.

(4) On April 14, 2015, claimant spoke with the employer's human resources representative. Claimant discussed a bankruptcy case with the representative, his prior open heart surgery and mentioned that he thought he was sometimes not receiving the breaks to which he was legally entitled.

(5) Sometime before June 22, 2015, a member of the employer's management told claimant that he was going to be cross-trained as a pawnbroker so, in addition to working as a salesperson, he could also write loans. Around this time, the employer hired a new salesperson because it was short-staffed and, on occasion, there were not enough sales staff to allow claimant to take breaks.

(6) On June 18, 2015, claimant learned that his physician had scheduled a surgery on his Achilles tendon for June 25, 2015. Claimant did not tell the manager or the employer's human resources department that he needed time off for this surgery. Claimant qualified for FMLA (Family Medical Leave Act) but did not request a medical leave of absence.

(7) On June 22, 2015, claimant sent the manager a text message that stated, "Thanks for the opportunity. I'm done." Exhibit 1 at 1. Claimant voluntarily left work on June 22, 2015.

**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 showing good cause for leaving work is modified if a claimant demonstrates that he or she had a permanent or long-term physical or mental impairment, there is insufficient evidence in the record to show that claimant had such impairment. Claimant referred to his prior open heart surgery, but did not describe its impacts or whether they were permanent or long-term. The same is true of the injury to his Achilles tendon. Claimant did not establish that he had a long-term or permanent impairment. However, even if he had, the outcome of this decision would remain the same for the reasons explained.

In the hearing, claimant mentioned that the employer sometime did not give him the meal and rest breaks required under Oregon law. Audio at ~15:10, ~15:37, ~18:38. OAR 839-020-0050 (January 1, 2014) provides that, under usual circumstances, an employer must allow employees to take a 10 minute rest break for each four hours worked, and a thirty minute meal break for each six to eight hours worked. However, claimant testified only that he was not able to take the required breaks on March 6 and March 16, 2015 and on April 20, 2015. Audio at ~13:36, ~30:32. Claimant did not dispute the manager's testimony that claimant's inability to take breaks was the reason that the employer hired a new salesperson to provide coverage for claimant that would allow him to take breaks. Audio at ~31:12. Claimant did not contend that he was required to work without breaks after the new salesperson was hired. The evidence most strongly supports that the failure of the employer to provide breaks to claimant was a short-lived circumstance about which the employer took appropriate corrective action. Absent evidence that the employer engaged in ongoing practices that violated Oregon laws governing workplace conditions, claimant did not show that those practices were a grave reason to leave work when he did because he did not show that they were likely to recur. *See J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (employer's persistent unlawful working conditions may constitute good cause for leaving work). As well, claimant testified at hearing that he did not leave work on June 22, 2015 because the employer was not providing breaks to him, but because of his upcoming surgery. Audio at ~13:36, ~30:32. Claimant did not show that the employer's alleged failure to provide breaks was good cause for him to leave work, either because the employer corrected the conditions to prevent reoccurrence of the alleged practice or because that alleged practice was not, in fact, the motivating factor for claimant's decision to leave work.

Claimant primarily left work because, based on the manager's statements in response to his vague inquiries about maybe needing time off for medical issues, he assumed that he would not be allowed to take that time off unless he provided thirty days' notice. Claimant did not present evidence that his health required that the surgery take place only seven days after he was notified of it on June 18, 2015. However, even assuming that it did, a reasonable and prudent person would not have assumed, based on the manager's response to a non-specific inquiry, that the employer would not forgo the 30-day notice requirement, without first telling the manager the date that the surgery was scheduled, requesting the time off, and finding out whether the employer would allow him the time off work. Also, a reasonable and prudent person who had already had dealings with the employer's human resources representative, as claimant had, would not have concluded that he needed to quit work in order to have his surgery without first consulting with the employer's human resources representative to determine if the employer's thirty day notice requirement applied to taking time off for a surgery. No reasonable and prudent person would quit work to have surgery based on unconfirmed assumptions that the employer would not allow him to take time off work without first pursuing those reasonable alternatives to quitting work.

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-44814 is affirmed.

Susan Rossiter and J. S. Cromwell, participating.

**DATE of Service:** October 29, 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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