

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1340

Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 25, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 85341). Claimant filed a timely request for hearing. On October 21, 2015, ALJ Seideman conducted a hearing, and on October 22, 2015, issued Hearing Decision 15-UI-46330, concluding that claimant voluntarily left work with good cause. On November 12, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

FINDINGS OF FACT: (1) Addus Healthcare employed claimant as a caregiver from August 25, to August 31, 2015.

(2) Claimant suffers from fibromyalgia, hypoglycemia, chronic fatigue syndrome, post-traumatic stress disorder (PTSD), and a chronic viral infection. As a result of these health problems, she is unable to tolerate stress or physical exertion. Stress or physical exertion exacerbates her symptoms to such an extent that she is unable to function. Exhibit 1 at 1.

(3) Claimant found her work for the employer to be very stressful. She had difficulty operating a device the employer gave her to help locate clients for whom she was expected to care and to record information about her clients. As a result, claimant became worried about locating her clients' homes and concerned that she would not arrive on time for her caregiving appointments. Claimant also found the work she was expected to perform for her clients, which included cooking, washing dishes, cleaning bathrooms and vacuuming, to be too physically demanding for her.

(4) After working for the employer for two days, claimant became ill. On August 31, 2015, she quit her job because of the health problems she was experiencing.

CONCLUSION AND REASONS: We agree with the ALJ. Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work 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 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 numerous permanent or long-term “physical or mental impairments” as defined at 29 CFR §1630.2(h) -- fibromyalgia, chronic fatigue syndrome, hypoglycemia, PTSD, and a chronic viral infection. A claimant with these impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for her employer for an additional period of time.

Because the work claimant performed for the employer was physically demanding and stressful, it exacerbated her health conditions to the extent that she became ill. Claimant therefore faced a grave situation on account of the work the employer expected her to perform. Although the employer’s representative complained at the hearing that claimant never notified her supervisor about her health restrictions, the employer never demonstrated that it had any work available for claimant that she could have performed, had it known about her limitations. Instead, the employer contended that claimant knew or should have known what duties she would be expected to perform when she accepted the job, and should not have taken the job if she was unable to do the work. Based on this record, we therefore conclude that a reasonable and prudent person, with the same physical and mental impairments as claimant, would have had no reasonable alternative but to quit her job.

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

DECISION: Hearing Decision 15-UI-46330 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: December 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. 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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