

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1374

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 27, 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 # 130022). Claimant filed a timely request for hearing. On October 29, 2015, ALJ L. Lee conducted a hearing, and on November 3, 2015 issued Hearing Decision 15-UI-47034, affirming the Department's decision. On November 20, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Express Employment Professionals employed claimant as a valet attendant/parking attendant from April 6 to May 15, 2015.

(2) Claimant suffered from post-traumatic stress disorder (PTSD), for which he was last treated in 2013 with therapy and medication. Claimant also suffered from early stages of glaucoma, cataracts or macular degeneration in his right eye, for he was treated with medication.

(3) The employer was a temporary agency, and assigned claimant to work indefinitely for its client, SP Plus, which provided valet services at the Oregon Health Science University (OHSU). During the first several weeks of the assignment, claimant worked as a valet podium attendant, which did not include driving customers' vehicles. SP Plus then required claimant to work as a parking attendant, which included driving customers' vehicles.

(4) On his first day as a parking attendant, claimant accidentally backed a customer's vehicle into another vehicle as he attempted to park, "barely" denting the bumper of one of the vehicles. Transcript at 32. Claimant reported the accident to SP Plus and expressed concern that he could cause a more serious accident for which he could be held personally liable. The employer did not discipline claimant for the accident, and assured him that he was covered by its automobile insurance.

(5) That same day, claimant contacted the employer and expressed concern that he could cause a more serious accident for which he could be held personally liable. The employer assured claimant that he was covered by SP Plus' automobile insurance and the employer's liability insurance. Claimant asked

to end the assignment with SP Plus. The employer informed claimant that it required two days' notice to end an assignment, and recommended that claimant continue the assignment while the employer sought another assignment for him.

(6) Claimant continued the assignment and had one or two additional minor accidents, one resulting in a "tiny little scratch" to a vehicle. Transcript at 32. Claimant reported the accident(s) to SP Plus, and was not disciplined. However, claimant remained concerned that he could cause a more serious accident for which he could be held personally liable, and therefore experienced stress and anxiety. On May 15, 2015, claimant ended the assignment for that reason.

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

OAR 471-030-0038(2)(a) (August 3, 2011) states that if the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a). In the case of individuals working for temporary agencies or employee leasing companies, the employment relationship shall be deemed severed at the time that a work assignment ends. *Id.* Here, claimant could have continued his assignment with the employer's client for an additional period of time after May 15, 2015, but chose to end the assignment on that date. Claimant therefore quit working for the employer on May 15, 2015.

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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Claimant suffered from PTSD and glaucoma, cataracts or macular degeneration, permanent or long-term "physical or mental impairment[s]" 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 impairment would have continued to work for his employer for an additional period of time.

Claimant quit work due to concern that he could cause a serious accident for which he could be held personally liable, which caused him to experience stress and anxiety. However, claimant failed to show that the early stages of glaucoma, cataracts or macular degeneration in one eye, for which he was treated with medication, made it unsafe for him to drive. He also failed to show that there was an unreasonable risk of being held personally liable for an accident, given that he was assured by the employer that he was covered by SP Plus' automobile insurance and the employer's liability insurance. Although claimant suffered from PTSD, he failed to show that the stress and anxiety he experienced working for the employer were so severe that no reasonable and prudent person with that condition would have continued to work for the employer for an additional period of time. Absent such showings, claimant failed to establish that he quit work with good cause. Claimant therefore is disqualified from the receipt of benefits.

DECISION: Hearing Decision 15-UI-47034 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: December 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. 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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