

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1401

Reversed
No Disqualification

PROCEDURAL HISTORY: On October 8, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 73053). The employer filed a timely request for hearing. On November 17, 2015, ALJ Holmes-Swanson conducted a hearing, and on November 18, 2015, issued Hearing Decision 15-UI-47835, concluding claimant voluntarily left work without good cause. On November 25, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted argument to EAB, including a doctor's letter that was not part of the hearing record. Most of the letter repeated information claimant provided through her own testimony at hearing. To the extent the letter contained new information, we did not consider that information when reaching this decision because claimant failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. ORS 657.275(2); OAR 471-041-0090 (October 29, 2006). We considered the entire hearing record and claimant's argument to the extent it was based on the record.

FINDINGS OF FACT: (1) Pepper Box Café employed claimant as a dishwasher from May 30, 2015 to August 30, 2015. Claimant worked part time for the employer, on the weekends.

(2) Claimant's job duties included washing dishes, and, less frequently, doing food "prep" work and cleaning. All of claimant's job duties required claimant's hands to come into contact with water, soap, and a bleach solution used for sanitation.

(3) Claimant has had eczema on her hands her entire life. Before she began working for the employer, she had sudden increases in her eczema symptoms ("flare-ups") approximately once yearly, and would receive treatment from a dermatologist at those times.

(4) Although the employer used mild, eco-friendly soap, within a week of working for the employer, claimant began experiencing eczema flare-ups on her hands as a result of the exposure to water, soap

and bleach while she was working. Claimant told her employer about the skin irritation and asked for gloves, which the employer provided, and claimant wore while she worked.

(5) Claimant's eczema would slowly improve during the week when she was not working for the employer. It did not fully heal, however, and would flare up again each weekend when she worked for the employer. During flare-ups, claimant experienced pain, itching and burning, and redness, bumps, peeling and cracking skin on her hands.

(6) Throughout her employment, claimant received treatment from a dermatologist, including a prescription ointment that she used for flare-ups. The dermatologist provided no other treatment options other than wearing gloves and otherwise limiting exposure to water and irritants.

(7) On August 31, 2015, claimant quit work because her job caused her to experience chronic eczema on her hands.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude that claimant quit 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 eczema, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with such an impairment 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.

In Hearing Decision 15-UI-47835, the ALJ concluded that claimant quit work without good cause, reasoning that, rather than quitting when she did, claimant had the reasonable alternative of seeking an accommodation for her condition from the employer.¹ Although the employer testified at hearing that it could have provided accommodations for claimant's eczema condition such as experimenting with other detergents, providing longer gloves, or allowing claimant to spend part of each shift allowing her hands to dry out doing prep work (Audio Record at 25:24 to 26:26), we disagree that the record shows those options were reasonable alternatives to claimant quitting work.

Despite working only two days per week for the employer, claimant experienced painful eczema every time she worked, that would slowly improve throughout the week, only to flare up again the next time she worked. It would have been unreasonable to expect claimant to continue working for the employer while it experimented with other, even more gentle, soaps and cleaning solutions where there was no guarantee the other products would not continue to aggravate claimant's eczema. Nor does the record show that reducing the time claimant spent washing dishes would alleviate her symptoms, where she

¹ Hearing Decision 15-UI-47835 at 3.

already worked only weekends for the employer, and her eczema did not fully heal during the five days she had off work each week. Moreover, the record does not show claimant was qualified to perform other work that did not require her to expose her hands to water and soap. Nor does the record show that longer gloves would improve claimant's eczema, where she already used gloves. Given those factors, claimant reasonably concluded that asking for additional accommodations, other than the gloves she already requested and used, would be futile.

In sum, the record shows that claimant quit work because of a reason of such gravity that no reasonable and prudent person with the characteristics and qualities of her impairment would have continued to work for the employer for an additional period of time. She therefore quit work with good cause, and is not disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 15-UI-47835 is set aside, as outlined above.²

Susan Rossiter and J. S. Cromwell

DATE of Service: January 4, 2016

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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² This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.