

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1514**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 6, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 74948). Claimant filed a timely request for hearing. On December 2, 2015, ALJ Triana conducted a hearing, and on December 3, 2015 issued Hearing Decision 15-UI-48710, affirming the Department's decision. On December 22, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he repeated some aspects of his hearing testimony and sought to present new information about his employment history and past interactions with the branch manager. The information about claimant's employment history was not relevant to the issue of whether or not he had good cause to leave work when he did. While claimant stated that he did not offer the new information he seeks to present during the hearing due to his nervousness, it does not appear from EAB's review of the hearing record that claimant's ability to explain himself or the circumstances surrounding the work separation was impaired by nerves. Claimant did not show that the nervousness he allegedly experienced was a factor or circumstance that reasonably prevented him from offering this new information during the hearing, which OAR 471-041-0090(2) (October 29, 2006) requires before EAB may consider on review new information not offered into evidence at the hearing. For this reason, EAB did not consider the new information that claimant sought to present in his written argument. EAB considered only information received into evidence during the hearing when reaching this decision. Even if we had, the outcome of this decision would remain the same for the reasons explained herein.

**FINDINGS OF FACT:** (1) Insurance Auto Auctions, Inc. employed claimant from October 17, 2007 until September 23, 2015, last as a loading operator. Among other duties, claimant drove a forklift and moved and organized cars in the employer's sales yard.

(2) In approximately 2013, claimant was diagnosed with asthma. He used an inhaler during the day and a nebulizer at night to control his symptoms.

(3) By approximately summer 2015, claimant thought he was not able to keep up with his work duties moving cars and that he needed another forklift driver to assist him in performing those duties. On several occasions, claimant mentioned his need for assistance to the employer's branch manager and the area manager. On one occasion, claimant discussed the backlog of work with the employer's branch manager and she told him she would authorize him to work overtime if he needed to catch up. Transcript at 34.

(4) By summer approximately 2015, claimant began to think that the branch manager had a poor attitude about him and did not listen to him when he made suggestions about work.

(5) On July 22, 2015, claimant sent an email to the area manager stating multiple concerns he had about his job, including his need for a forklift driver to assist him and the poor condition of the employer's car yard, which had pot holes that caused rough driving conditions for the forklift. A few days later, the area manager called claimant and told claimant he was working to address claimant's concerns.

(6) After July 22, 2015, claimant felt pressure and stress when he fell behind in his work and experienced sleeplessness. Claimant experienced heartburn and stomach pain which he attributed to stress. Claimant's mother suggested he might be developing an ulcer. Claimant did not seek a medical evaluation of or treatment for these symptoms. Around this time, claimant's asthma worsened and he needed to use his inhaler six or seven times per day and his nebulizer once or twice per night. In approximately mid-August 2015, claimant saw his physician about his asthma symptoms. The physician prescribed steroids and increased his medications. Claimant's asthma symptoms improved. Claimant did not seek professional treatment for his stress or sleeplessness.

(7) After July 22, 2015, claimant continued to occasionally tell the branch manager that his workload was too great. In a response to a text message that claimant sent to either the branch manager or the area manager, he understood that employer representative to state that, due to budgetary constraints, the employer would not be able to hire a new forklift driver to assist him that year, or until January 2016 at the earliest. Despite claimant's concerns over keeping pace with his work, he did not receive any disciplinary warnings for failing to perform his work in a timely way.

(8) A few days before September 23, 2015, the branch manager made arrangements for the forklift driver assigned to the employer's overflow yard to assist claimant two days each week in the sales yard, which would provide assistance to claimant despite the lack of budgetary authority to hire a new forklift driver. The branch manager did not immediately inform claimant of the arrangement she had made.

(9) On September 23, 2015, claimant was scheduled to work from 8:00 a.m. until 5:00 p.m. At 2:30 p.m., claimant thought he was "too far behind" with his workload. Transcript at 6. Claimant told the area manager and the branch manager he was quitting and left the workplace. Claimant did not return. On September 23, 2015, claimant voluntarily left work.

**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 P2d 722 (2010). Claimant had asthma, a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with that 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 his employer for an additional period of time.

That claimant might have subjectively thought he was unable to keep pace with his work, was not an objectively grave reason for him to leave work. The employer had not warned him about that aspect of his performance and he did not contend that his job was in jeopardy. Transcript at 10, 11, 28. In addition, the branch manager had authorized claimant to work overtime if he felt he was not able to keep up with his work, which presumably would alleviate the stress he felt due to unfinished work. Transcript at 34. Claimant also did not show that the impacts of the pressure he felt to keep pace, or the stress he experienced was a grave reason to leave work. Claimant sought medical treatment only in connection with his asthma, and he testified that it improved after his physician prescribed new medication. His stress and sleepless and the gastric symptoms he experienced were apparently not serious enough for him to seek treatment. Claimant did not describe the multiple physical symptoms about which he testified in a way that suggested they were seriously debilitating or had a harmful impact on his personal or professional life. On these facts, claimant did not meet his burden to demonstrate that any of these symptoms, viewed alone or in combination, were grave reasons to leave work. Assuming for the sake of argument that they were, a reasonable and prudent employee would have sought professional treatment to ease them before concluding that their severity required him to leave work. As well, claimant's decision to leave work appeared to coincide with the employer's finalization of arrangements to secure assistance for him in performing his work. A reasonable and prudent employee, who thought he needed to leave work because the employer had ignored his requests for assistance, would not have left work before clarifying with the employer that such assistance was not going to be forthcoming.

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-48710 is affirmed.

Susan Rossiter and J. S. Cromwell, participating.

**DATE of Service:** January 20, 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](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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