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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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VQ 005.00

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0421

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 5, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 70612). Claimant filed a timely request for hearing. On April 5, 2016, ALJ L. Lee conducted a hearing in which the employer did not participate, and on April 7, 2016, issued Hearing Decision 16-UI-56787, affirming the administrative decision. On April 13, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Crater Animal Clinic employed claimant as a dog groomer from July 15, 2011 until October 26, 2015.

(2) On May 21, 2015, claimant was bathing a large dog that fell off the table on which the dog had been placed for grooming. Claimant was able to catch the dog with her right arm and prevented the dog from falling to the ground. The act of catching the dog severely strained claimant's shoulder, neck, and right arm. The pain caused by this strain became progressively worse. Exhibit 1, 11/9/15 IME at p. 7.

(3) Claimant has had arthritis in her neck for a number of years, but this condition was not particularly painful and did not impair her ability to perform her work as a dog groomer. During the last several months of her work for the employer, however, claimant experienced severe pain in her right arm and shoulder, as well as numbness and a pricking or burning sensation in her right arm and the left side of her neck and shoulder. *Id.* At times, claimant's hands cramped up, making it impossible to hold the tools needed to perform her work. Claimant was responsible for bathing large dogs, those weighing over 40 pounds, and she found it difficult and painful to perform this work because of her medical conditions.

(4) Claimant sought care from her health care provider, who treated claimant's conditions with pain medication, trigger point injections, and massage. In addition, claimant often wore a wrist splint at work. Despite these treatments, claimant's health did not improve. Claimant's health care provider told claimant that an MRI was necessary to properly diagnose her conditions, but claimant could not afford the cost of the MRI. Claimant's health care provider also warned claimant that she would only get

worse if she did not stop "what she was doing," and that claimant was not getting any better. Audio Record at 32:06. Although claimant talked with her health care provider about the possibility of reducing her work hours, the health care provider never recommended that claimant do so. Audio Record at 40:50.

(5) Claimant's supervisor knew about claimant's health conditions and the difficulties she experienced in performing her work. The supervisor assigned less skilled workers, "kennel girls," to assist claimant with her job duties by bathing dogs before claimant groomed them. The "kennel girls" created more work for claimant, however; claimant had to re-do their work because the "kennel girls" did not properly bathe the dogs. Audio at 43:47.

(6) On September 15, 2015, claimant filed a worker's compensation claim for the injury she sustained on May 21, 2015.

(7) By the middle of October, 2015, claimant's condition had worsened to a point to where she was unable to safely groom dogs because she could not hold her equipment or the dogs. On or about October 12, 2015, claimant told the employer she was quitting her job, effective October 26, 2015. Claimant voluntarily left work for the employer on October 26, 2015.

(8) After claimant quit her job and as a result of her worker's compensation claim, claimant received an MRI and an independent medical examination. Claimant was diagnosed as having paresthesia[1] of her left arm, arthritis, and degeneration of her cervical disc, among other conditions. Exhibit 1.

(9) By letter dated January 14, 2016, claimant's worker's compensation claim was denied.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that 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 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time. Claimant had paresthesia, arthritis and degeneration of her cervical disc, permanent physical impairments as defined at 29 CFR §1630.2(h)(1. 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.

[1] "Paresthesia – abnormal skin sensations (as tingling or tickling or itching or burning) usually association with peripheral nerve damage." www.webster-dictionary.org.

The ALJ concluded that claimant quit work without good cause. She reasoned that although "claimant was facing a situation of gravity," due to the pain and discomfort she was experiencing at her job, "there was insufficient evidence to find claimant pursued all reasonable alternatives to quitting her job." Hearing Decision 16-UI-56787 at 3. The ALJ found that claimant could have waited to see the results of her worker's compensation claim: "for example, if she had been medically excused from working full-time, the employer would have been legally obligated to honor the doctor's orders to the extent reasonably possible." *Id.* The ALJ also held that claimant could have "sought her doctor's assistance in reducing her hours or placing her on a medical leave of absence," requested "modified duties or other reasonable accommodations from the employer," or utilized the assistance of the "kennel girls" in performing her job. *Id.* We agree with the ALJ that claimant faced a grave situation at her job, but disagree with the ALJ's conclusion that she had reasonable alternatives to voluntarily leaving work.

Claimant could not reasonably continue working at a job that she was physically unable to perform and that worsened her conditions while she awaited the results of her worker's compensation claim. Taking time off from work – either through a medical excuse resulting from her worker's compensation claim or through a leave of absence granted by the employer – was not a reasonable alternative to quitting. A leave of absence would do nothing to change the working conditions that exacerbated or caused her medical conditions. *See Early v. Employment Department*, 247 Or App 321, 329, ___ P3d ___ (2015) (when a claimant's work situation made her sick, taking a leave of absence was not a reasonable alternative to leaving her job because a leave would not resolve the work situation that was causing claimant's illness). The record does not support the ALJ's conclusions that claimant could have sought a reduction in her work hours to attempt to alleviate her pain and discomfort, or could have asked the employer for some type of reasonable accommodation. Claimant discussed the possibility of reducing her work hours with her health care provider, and the provider never recommended any such reduction. Audio recording at 40:50. Although claimant's supervisor knew about claimant's health conditions, the supervisor never offered claimant any other work that claimant could have more easily and comfortably performed. *See Early v. Employment Department*, 247 Or App at 328 (when the employer was aware that a claimant was quitting her job after unsuccessful attempts to resolve workplace problems, the employer's failure to offer claimant alternatives to quitting "implicitly suggest[s] that there were none.") Finally, greater utilization of the "kennel girls" would not have helped claimant; the inability of these employees to perform the job they were expected to do created more work for claimant. Given the lack of alternatives available to claimant, a reasonable and prudent person with the same health conditions as claimant would have concluded she had no option but to quit her job.

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

DECISION: Hearing Decision 16-UI-56787 is set aside, as outlined above.

Susan Rossiter and D. P. Hettle;
J. S. Cromwell, not participating.

DATE of Service: <u>May 6, 2016</u>

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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