

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0460

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 2, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 143053). Claimant filed a timely request for hearing. On April 12, 2016, ALJ Shoemake conducted a hearing, and on April 19, 2016, issued Hearing Decision 16-UI-57561, concluding that claimant voluntarily left work without good cause. On April 21, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's written argument consisted of a handwritten statement from a coworker about conditions in the employer's kitchen. This information was not part of the hearing record, and claimant failed to show that factors or circumstances beyond her reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

FINDINGS OF FACT: (1) Settlers Park, a senior living community, employed claimant as a cook from November 11, 2013 until August 8, 2015.

(2) The employer used a swamp cooler to cool the kitchen where claimant worked. In summer of 2014, the swamp cooler did not function properly and the kitchen often became very hot. At times, the temperature in the kitchen was over 100 degrees. Claimant experienced breathing problems and became dizzy on the job during hot weather. Claimant repeatedly complained to her managers about inadequate cooling in the kitchen, and also told managers about the health problems she was experiencing.

(3) In approximately June 2015, claimant's doctor diagnosed her with asthma. From June through July 2015, claimant continued to have breathing problems due to the high temperatures in the kitchen, and continued to talk to her managers about problems with the cooling system. During the last week of July 2015, claimant's doctor recommended that claimant take breaks at work when necessary in order to cool herself and better control her breathing.

(4) On August 4, 2015, claimant told her employer that she was voluntarily leaving work on August 8, 2015. Claimant's last day of work for the employer was August 8. Claimant quit her job because of the breathing problems she was experiencing at work.

(5) On August 11, 2015, claimant's doctor restricted her completely from working due to her asthma.

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 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 her employer for an additional period of time.

Claimant's asthma, which made it difficult for claimant to breathe in the hot kitchen where she worked, constituted a grave situation. In Hearing Decision 16-UI-57561, however, the ALJ concluded that claimant had alternatives to quitting work which she failed to pursue. According to the ALJ, claimant "could have taken her concerns to the employer and given the employer an opportunity to make accommodations for claimant." Hearing Decision 16-UI-57561 at 2. We disagree.

Because of her asthma, claimant was unable to tolerate the temperatures in the kitchen where she worked. As a result, alternatives suggested by the employer – such as having claimant wash dishes or assigning claimant to light duty (Audio recording at 31:19) – that involved work in the kitchen would not have alleviated claimant's breathing problems. In addition, claimant's doctor restricted her entirely from working three days after she stopped work for the employer, demonstrating that no accommodation on the job for claimant's medical condition would have been successful at the time claimant quit. Under these circumstances, we conclude that a reasonable and prudent person with asthma would not have continued to work for the employer for any additional period of time.

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-57561 is set aside, as outlined above.

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

DATE of Service: May 24, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.