

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0496

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 11, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 133814). Claimant filed a timely request for hearing. On April 7, 2016, ALJ Shoemake conducted a hearing, and on April 12, 2016 issued Hearing Decision 16-UI-57064, affirming the Department's decision. On April 28, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) ARS Fresno, LLC employed claimant from October 7, 2014 to January 30, 2016. Claimant worked for the employer as an assistant manager at its gas station/convenience store.

(2) Claimant had difficulty standing on the fuel pad pumping gas for long periods of time because her leg would feel numb and she felt she was at risk of falling. In December 2015, claimant's supervisor approached claimant because she appeared to be struggling while working on the fuel pad and assigned her to work elsewhere. Two or three weeks later, claimant noticed she was scheduled to resume working on the fuel pad. She asked her supervisor if the schedule was a mistake, and the supervisor said it was not, and that claimant was supposed to work on the fuel pad. Claimant did not tell her supervisor that she had a medical condition or disability, or that she was physically incapable of working on the fuel pad.

(3) In January 2016, claimant was diagnosed with sciatica. Her symptoms included pain, numbness and tingling in her leg, and back pain. Her physician restricted her from lifting more than 10 pounds and pushing or pulling. Claimant asked her physician to restrict her from working on particular days, but the physician said he would not give that sort of specific restriction. Claimant also felt pain in her hands while she was working.

(4) On January 16, 2016, claimant checked the new schedule and noticed she was scheduled to work on the fuel pad the following week. Claimant knew that she would experience pain working on the fuel pad and that it would be "really rough for me." Transcript at 11. Claimant did not think she was physically

capable of working a full shift on the fuel pad. The employer had other duties she could be assigned to, but those caused her pain as well.

(5) Claimant notified her supervisor that she could not work as scheduled on January 21st because working as a fuel attendant caused her too much pain. Claimant also notified the employer that she was going to quit work in two weeks. Claimant "didn't feel like [the employer was] going to accommodate me in any way . . . because my manager never said anything about, you know, we can get you a chair to sit on . . . when you're not working on the fuel pad or, you know, or anything like that." Transcript at 11. The resignation notice stated, "This letter is to inform you that due to the fact that I am physically unable to complete some of the job duties that are assigned to me and that despite my attempts at requesting accommodations for my disabilities, nothing is being done to help me with my disabilities. I resign my position effective Saturday, January 30th, 2016." Transcript at 21. Upon receiving the resignation, claimant's supervisor asked claimant how she could help. Claimant asked for several days off work, asked to be scheduled to work particular hours on other days, said she would need to work as a cashier and sit down during the shifts she worked, and said if she had too much pain she would need to call someone to come finish her shift for her. Claimant's manager granted claimant's schedule changes.

(6) On January 18, 2016, claimant provided the employer with a note from her doctor that restricted her from driving or operating machinery while taking sedating medication, and required her to limit lifting. The note did not indicate that claimant had a disability or could not do particular duties other than driving or operating machinery. The employer's human resources manager, district manager and claimant's direct manager began communicating with each other about accommodating claimant based on her doctor's note. The employer customarily accommodated employees who requested accommodation even without immediately receiving medical documentation of the employees' disabilities. The human resources manager told claimant's direct supervisor that the employer could accommodate her sitting while working as a cashier, and that the human resources manager would need more information from claimant about her disability and to obtain a medical certification from her.

(7) Approximately two days before claimant quit work, the district manager asked if there was anything he could do to help claimant during her last days at work or in the future. Claimant said no. Effective January 30, 2016, claimant quit work. Claimant "may not have quit if . . . someone would have come forward and said, you know, hey, we can help you." Transcript at 37.

(8) On February 5, 2016, claimant sought medical treatment for her hand pain and was diagnosed with tendonitis in both thumbs.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant voluntarily left work without 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 sciatica, a permanent or long-term

“physical or mental impairment” as defined at 29 CFR §1630.2(h).¹ 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 quit work because her physical impairments limited the types of duties she could perform and made it difficult or painful for her to work, and she concluded that the employer would not provide accommodations that would allow her to continue working, like scheduling her to work as a cashier instead of as a fuel attendant, allowing her to sit down when she worked as a cashier, allowing her to leave work if she felt it necessary, and altering her work schedule. Although claimant testified that she did not feel like the employer was going to accommodate her, however, at the time claimant gave notice of her intent to quit work, she had never notified the employer that she required accommodation on a long-term or permanent basis and had never provided the employer with a doctor's note that required the types of accommodations she wanted. In fact, she had asked her doctor for a note requiring scheduling restrictions and her doctor refused to provide her with one. It was not until a couple of days after claimant submitted her resignation that she provided a doctor's note, and that note did not restrict claimant from working as a fuel attendant, require the employer to provide her with a seat while cashiering, require the employer to allow her to leave work, or include any schedule adjustments. The record also shows the employer implemented accommodations upon learning that claimant needed them. For example, even though claimant had not provided any proof to the employer that accommodations were medically necessary, upon finding out that claimant was requesting accommodations in her work, claimant's supervisor asked claimant how she could help claimant and then granted all of claimant's accommodation requests. Later, only a couple of days before claimant's resignation was effective, the district manager also asked claimant how he could help her.

Although claimant required some accommodations in her work in order to be physically capable of continuing to work for the employer, claimant notified the employer of her intent to resign before allowing the employer a reasonable opportunity to respond, and, at the time she quit, the employer had demonstrated that it was responsive to her requests for accommodation by changing her schedule, changing her job duties, allowing her to sit while cashiering, and allowing her to leave work when she needed to do so. Allowing the employer the opportunity to provide those accommodations was a reasonable alternative to quitting work. Under the circumstances, it is unlikely that no reasonable and prudent person in claimant's situation would have concluded she had no reasonable alternative but to quit work. Claimant therefore quit work without good cause, and she is disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 16-UI-57064 is affirmed.

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

DATE of Service: June 1, 2016

¹ Claimant also had tendonitis in her thumbs, but was not diagnosed with that condition until after her work separation. Therefore, although claimant's tendonitis is or may be considered a permanent or long-term impairment, it is unlikely that the existence of that impairment would have affected claimant's separation. Even if we had decided otherwise, however, the outcome of this decision would remain the same for the reasons explained herein.

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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