

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0842**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On May 25, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 100416). Claimant filed a timely request for hearing. On July 5, 2016, ALJ Shoemake conducted a hearing, and on July 8, 2016 issued Hearing Decision 16-UI-63380, affirming the Department's decision. On July 12, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision to the extent it was based upon the hearing record.

**FINDINGS OF FACT:** (2) The Home Depot employed claimant as a weekend greeter and lot attendant from May 2014 to April 30, 2016.

(2) Since at least 2014, claimant has experience back pain due to a medical condition. In 2015, claimant was diagnosed with a bone spur on his right foot. Claimant experienced back and foot pain because of his conditions.

(3) After beginning work with the employer, claimant experienced pain at work. He asked the employer about moving to different positions, but did not tell the employer about his medical conditions or ask the employer to transfer or otherwise provide reasonable accommodations.

(4) On April 8, 2016, claimant notified the employer he was going to quit work effective April 30, 2016. Claimant did not tell the employer that he was quitting work because of medical conditions and was not advised by a physician to leave his job.

**CONCLUSIONS AND REASONS:** We agree with the Department and the ALJ that 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 back and foot conditions that may be considered permanent or long-term “physical or mental impairments” 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.

Claimant may well have felt he faced a somewhat grave situation at work because performing his duties caused him to experience back and foot pain. In order to show good cause for quitting work, however, claimant must also prove that he had no reasonable alternatives but to quit work when he did. The record in this case fails to show that claimant ever notified the employer that he had medical conditions that caused him pain at work, asked the employer to transfer him to a different position that would cause him less pain, or asked the employer to accommodate him by modifying his duties in a way that might alleviate his pain at work. Nor did claimant suggest or prove that it would have been futile or unreasonable for him to have done so. A reasonable and prudent person with back pain and a bone spur in his foot, who experienced pain at work because of those conditions, would not have left work without at least first notifying the employer of his situation and asking for assistance to resolve it. Because he quit work without having done so, or establishing on this record that it would have been futile or unreasonable to approach the employer, he has not shown good cause for quitting work. Claimant is, therefore, disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Hearing Decision 16-UI-63380 is affirmed.

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

**DATE of Service:** August 8, 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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