

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0862**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On June 7, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 91517). Claimant filed a timely request for hearing. On July 8, 2016, ALJ Vincent conducted a hearing, and on July 11, 2016 issued Hearing Decision 16-UI-63468, concluding claimant had good cause for leaving work. On July 20, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Steve Wheeler Tire Center employed claimant from March 3, 2015 to April 5, 2016.

(2) Claimant has impaired hearing. He has 83% hearing loss in one ear, and 88 % hearing loss in the other. Claimant's condition is permanent.

(3) Claimant's working conditions included proximity to impact wrenches and other loud tools. Although hearing protection was available, claimant could not wear it all the time while at work because wearing hearing protection made him unable to hear coworkers or intercom messages. The employer did not have any other environment in which claimant could perform his work.

(4) Claimant attributed much of his hearing loss to working in loud environments. He was afraid he would continue to suffer additional hearing loss and possible deafness if he continued to work in a loud environment like the employer's tire center. On April 5, 2016, claimant quit work to protect his remaining hearing.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant showed good cause for leaving work.

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 impaired hearing, 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.

Claimant's hearing was significantly impaired, and he quit work to avoid suffering additional hearing loss as a result of working in a loud environment. Due to the nature of the tire center business, the only environment available to claimant was an area in which loud tools were used throughout his shift. Because it would be necessary to remove protective gear to speak with coworkers and hear intercom messages, wearing protective gear was not an adequate solution to his problems. It appears on this record that claimant did not have reasonable alternatives to leaving work that would address or resolve his concerns. The disabling effects of repeated exposure to loud noises are commonly known.<sup>1</sup> No reasonable and prudent person with over 80% hearing loss in both ears would risk further hearing loss by continuing to work in a loud environment. Claimant therefore established that he had good cause to leave work to protect his remaining hearing. Claimant is not disqualified from receiving unemployment insurance benefits because of this work separation.

**DECISION:** Hearing Decision 16-UI-63468 is affirmed.

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

**DATE of Service:** August 10, 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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<sup>1</sup> *See generally* Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health (NIOSH), <http://www.cdc.gov/niosh/topics/noise/>