

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0176

Reversed
No Disqualification

PROCEDURAL HISTORY: On November 22, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 142653). The employer filed a timely request for hearing. On February 2, 2017, ALJ Ballinger conducted a hearing, and on February 3, 2017, issued Hearing Decision 17-UI-76155, concluding claimant voluntarily left work without good cause. On February 11, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Trashco Services, Inc. employed claimant as a trash collector from May 9, 2016 to October 17, 2016.

(2) From “just about day 1” of his employment, claimant complained to the employer about his knees, both of which were “bone on bone” “where there’s no cartilage.” Transcript at 9, 12, 22. However, in mid-September, 2016, claimant was pushing a dumpster and “got squished” when a coworker, also pushing a dumpster, ran into him from behind, injuring claimant’s right knee. Transcript at 9. Claimant told the dispatcher what had happened but never formally filed a worker’s compensation claim with the employer. Claimant saw a doctor for the injury and an x-ray after which the doctor prescribed a knee brace and suggested claimant request “light duty” work. Transcript at 12-13. Claimant disclosed the doctor’s suggestion to the employer, which modified his route to reduce the number of stops and eliminate inclines. Thereafter, claimant continued to work, but favored his right knee, which increased the stress on his left knee.

(3) By October 11 or 12, 2016, both of claimant’s knees were “so inflamed it was hard to walk.” Transcript at 14. Around that time, the employer notified claimant that it was terminating his employment because he “couldn’t do the job.” Transcript at 6. However, before that took place, another trash collector was discharged and claimant was asked to continue.

(4) Claimant continued to work a few days after October 12, but on October 17, 2016, notified the owner he “just couldn’t do the job” any longer and quit. Transcript at 14. Later that day, claimant saw

his physician, who concluded that claimant needed a complete left knee replacement, which was performed in November 2016.

CONCLUSIONS AND REASONS: We disagree with the ALJ. Claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he (or she) 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). At the time claimant quit work, his knees were both “bone on bone” “where there’s no cartilage” which we infer were permanent or long-term “physical or mental impairment[s]” as defined at 29 CFR §1630.2(h). A claimant with such impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for his employer for an additional period of time.

In Hearing Decision 17-UI-76155, after finding that claimant did not inform his doctor that each of his knee injuries was work related, the ALJ concluded claimant did not show good cause for leaving work when he did, reasoning that a reasonable employee would have done so to preserve his job while using the worker’s compensation system before deciding to quit. Hearing Decision 17-UI-76155 at 1-3. We disagree.

First, establishing that physical injuries or conditions are job related and compensable is not up to an employee. Those decisions are made by medical professionals and/or insurers insuring against the possibility of work injuries based upon facts and opinion establishing both medical causation and a work connection, which this record lacks. Second, the record does show that claimant disclosed to his doctor that the September right knee injury occurred “on the job.” Transcript at 26. The record also shows that claimant’s left knee “condition,” rather than occurring on the job, probably preexisted his right knee injury, as claimant initially testified. Transcript at 9. Moreover, on this record, formally filing worker’s compensation claims for the two knee conditions was not a reasonable alternative to quitting on October 17, 2016, when the undisputed evidence was that claimant could barely walk, let alone perform the work of a trash collector, by that time. Litigation regarding the compensability of the underlying knee conditions likely would have been lengthy, leaving claimant with only the possible alternative of an extended, unpaid leave of absence which the employer’s witness indicated may not have been granted. Transcript at 22. *See Sothras v. Employment Division*, 48 Or App 69, 616 P2d 524 (1980) (a potentially lengthy and unpaid leave of absence generally is not a reasonable alternative to leaving work due a debilitating medical condition).

Claimant demonstrated that his circumstances were so grave on October 17, 2016 that no reasonable and prudent person with the characteristics and qualities of an individual with his impairments would have continued to work for the employer for an additional period of time. Accordingly, claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of this work separation.

DECISION: Hearing Decision 17-UI-76155 is set aside, as outlined above.¹

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

DATE of Service: March 9, 2017

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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¹ This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.