

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0267

Affirmed
Disqualification

PROCEDURAL HISTORY: On October 12, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 90214). Claimant filed a timely request for hearing. On December 13, 2016, ALJ Shoemake conducted a hearing, and on December 20, 2016 issued Hearing Decision 16-UI-73258, affirming the Department's decision. On January 5, 2017, claimant filed an application for review with the Employment Appeals Board (EAB). On January 23, 2017, EAB issued Appeals Board Decision 2017-EAB-0021, reversing Hearing Decision 16-UI-73258, and remanding the case to the Office of Administrative Hearings (OAH) for additional information. On February 16, 2017, ALJ Shoemake conducted a hearing on remand and issued Hearing Decision 17-UI-77178, again affirming the Department's decision. On March 1, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written arguments to the extent they were based on the record.

FINDINGS OF FACT: (1) Medford School District 549C employed claimant part-time as a member of its "educational support staff" from September 1, 2016 to September 6, 2016. Exhibit 1.

(2) Claimant had an undiagnosed back condition for which she had received treatment from various medical providers for more than ten years. Her treatment included medication, chiropractic adjustments and massage therapy. Claimant's chiropractor, who was treating her in September 2016, recommended that she only work in employment that did not require her to stand for more than one and one half hours without the opportunity to sit and rest. Exhibit 2.

(3) When claimant applied for the position with the employer, she believed she was applying for a classroom position as an educational assistant. At her interview on August 30, 2016, the employer told her it was interviewing for three positions – playground monitor, crossing guard and classroom assistant.

When claimant was asked which position she wanted, she told the interviewer she wanted the classroom position without specifying why.

(4) On August 31, 2016, the employer offered claimant a job without telling her which position it was hiring her for and claimant accepted.

(5) On September 1, 2016, claimant went through general training without being told what position she had been hired for but was told her first day at school would be September 6.

(6) Upon reporting for work on September 6, 2016, claimant was directed to the playground to work as a monitor where eventually she learned that was the position she had been hired for. At the end of her 3.75 hour shift, claimant was unhappy because she believed she had applied for and accepted a classroom position and was experiencing back pain. She met with the principal with whom she had interviewed and told the principal she was not interested in the playground monitor position and only wanted to work in the classroom, which was the position she thought she had accepted. The principal apologized for the misunderstanding, told her no classroom positions were available and offered her a crossing guard position which claimant declined. When claimant spoke to the employer's human resources office, she relayed the same information and was told only to keep applying and specify classroom only. Claimant did not notify either the principal or the human resources office of her back condition or that she had experienced back pain as the result of her shift.

(7) On September 6, claimant quit because she believed the playground monitor position was not the position she had applied for and could not perform the duties of the position due to her back condition. When claimant quit, she did not notify the employer of her back condition or that the job had caused her back pain. Nor did she request an accommodation from the employer either allowing her to sit every hour and one half and rest consistent with her provider's recommendation or transferring her to classroom position.

CONCLUSIONS AND REASONS: We agree with the Department and ALJ. Claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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 received treatment for an undiagnosed back condition for more than ten years and it was likely a permanent or long-term physical...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 the employer for an additional period of time.

Viewing the record as a whole, claimant quit work because she did not believe she could perform the playground monitor position due to her back condition and pain and that doing so would worsen her

condition. Although claimant's back condition presented a grave concern for her, we agree with the ALJ that she failed to pursue reasonable alternatives before quitting after one shift. Claimant could have informed the employer about her back condition, explained that performing the monitor position caused her significant pain, and could requested an accommodation consistent with her experience and provider's recommendation - that she be allowed to alternate between sitting and standing at least every hour and one -half. If that was not feasible, claimant could have asked to be transferred to a classroom position where she would more likely be able to comply with the provider's recommendation. The employer's job description for the position implied that the employer would have seriously considered such a request as it stated, "Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions" of a job. Exhibit 1. Accordingly, claimant failed to meet her burden to show that no reasonable and prudent person in her circumstances, with the characteristics and qualities of an individual with her impairment, interested in maintaining employment, would have at least pursued those reasonable alternatives before deciding to quit and continued to work for the employer for an additional period of time.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits until she has earned at least four times her weekly benefit amount from work in subject employment.

DECISION: Hearing Decision 17-UI-77178 is affirmed.

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

DATE of Service: April 4, 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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