

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0555

Reversed
No Disqualification

PROCEDURAL HISTORY: On March 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 113906). Claimant filed a timely request for hearing. On April 24, 2017, ALJ Meerdink conducted a hearing in which the employer did not participate, and on April 25, 2017, issued Hearing Decision 17-UI-81703, affirming the administrative decision. On May 5, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

In reaching this decision, EAB considered claimant's written argument to the extent it was relevant and based on evidence in the record.

FINDINGS OF FACT: (1) Roto Rooter employed claimant as a route driver on February 27 and 28, 2017. Claimant, who had worked as a school bus driver, mill worker, and logger, was 63 years old and had no experience driving the truck the employer was going to assign him to drive, and had never performed the work the employer expected him to perform as a route driver, which was to pump, clean, and refill portable toilets.

(2) During the two days claimant worked for the employer, claimant rode with another route driver and observed the driver's work; claimant understood that he would be expected to perform this same type of work if he continued working for the employer. The route driver's duties involved driving over narrow, unpaved roads to remote rural areas, and maneuvering a large truck into extremely "tight places," and servicing portable toilets. Audio recording at 7:05. Claimant believed that he would be unable to competently or safely drive such a route and perform such maneuvers. Claimant also believed the work of pumping, cleaning, and filling portable toilets would be too fast-paced and strenuous for him, and was concerned that his inability to perform this work could result in injury to him or his coworkers. Audio recording at 9:46, 11:42.

(3) Although claimant talked extensively with the employer's representatives about his concern that he could not perform the job of a route driver, he was given no indication that the employer had other work available for him. Audio recording at 15:09. On February 28, 2017, claimant voluntarily left work for

the employer because he did not believe he could perform the work the employer was going to assign him.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that claimant voluntarily left work with 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 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for her employer for an additional period of time. Leaving work without good cause includes leaving suitable work to seek other work. OAR 471-030-0038(5)(b)(A). In determining whether any work is suitable for an individual, the Department shall consider, among other factors, the degree of risk involved to the health and safety the individual, and the physical fitness and prior training and experience of the individual. ORS 657.190.

The ALJ found that claimant “quit because he was worried about the employer’s expected workload.” The ALJ then concluded that claimant failed to demonstrate he faced a grave situation because “there is no evidence [claimant] was unable to perform the work.” Hearing Decision 17-UI-81703 at 2. We disagree.

Claimant’s concern that he would be unable to safely or effectively perform the job duties required of a route driver was based on reasonable considerations. Claimant had no experience driving the truck the employer expected him to drive, and had never done the type of work the employer was going to assign him. Claimant’s age (63)¹ understandably made him doubt his ability to keep up with a job that was fast-paced and required strenuous physical activity. We therefore conclude that the work was not suitable for claimant: he risked harm to himself and others if he was unable to competently perform work that he reasonably believed, based on his age, lack of relevant work experience, and difficulty of the tasks expected of him, he could not perform. Claimant therefore faced a grave situation, and given no indication that the employer had other work available for him, he had no reasonable alternative but to voluntarily leave work.

Claimant voluntarily left work with good cause. He is not disqualified from the receipt of unemployment benefits based on this work separation.

DECISION: Hearing Decision 17-UI-81703 is set aside, as outlined above.

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

DATE of Service: May 25, 2017

¹ Audio recording at 11:22.

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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