

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0623

Reversed
No Disqualification

PROCEDURAL HISTORY: On April 4, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 84921). Claimant filed a timely request for hearing. On May 9, 2017, ALJ Frank conducted a hearing, and on May 11, 2017 issued Hearing Decision 17-UI-83166, affirming the Department's decision. On May 18, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Associated Cleaning Services, LLC employed claimant as a custodian from March 5, 2017 to March 11, 2017. Claimant had not done custodial work before she worked for the employer.

(2) Claimant had received treatment for degenerative disc disease since 2000. She saw a doctor for her condition every three months, and had to take medication to control her pain. Claimant had never discussed work restrictions with her doctor before because, before claimant worked for the employer, she had not experienced excessive pain due to work.

(3) Claimant's duties included lifting and carrying buckets of water, bending, and stooping and crawling to clean baseboards, windows and chairs.

(4) On March 7, 2017, the employer assigned claimant to clean at three locations. Claimant cleaned the first two locations, but was unable to continue working at the third location due to pain she was experiencing.

(5) After claimant was unable to complete her shift on March 7, 2017, the employer's operations manager called claimant and told claimant she was "perhaps not cut out for the job." Audio Record at 16:56 to 16:59. Claimant asked the manager to give her another chance to continue working. Claimant worked cleaning one location per shift from March 8 to March 11, 2017, but continued to have pain and had to take extra pain medication to continue working.

(6) Claimant did not have a microfiber cleaner with a pole to use at work, which may have helped claimant avoid some stooping and bending to clean. Claimant did not tell the employer she was experiencing pain from performing her job duties.

(7) On March 11, 2017, claimant quit work because she was unable to perform the functions of the job without pain.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant quit 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 P2d 722 (2010). Claimant had degenerative disc disease, which may be considered 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 her employer for an additional period of time.

In Hearing Decision 17-UI-83166, the ALJ concluded that claimant voluntarily left work without good cause, reasoning that claimant’s testimony about her pain from work lacked credibility and that she did not pursue reasonable alternatives to quitting work by telling the employer about her limitations from degenerative disc disease and giving the employer a chance to accommodate claimant’s condition.¹ The ALJ also reasoned that claimant quit work, not due to her back condition, but because she disliked her commute.² We disagree.

The preponderance of the evidence shows that claimant did not quit work due to her commute, but instead that she did so because she could not handle the pain she experienced at work and believed there were no alternatives that would help her perform her job duties without pain. The ALJ found the lack of job restrictions from her doctor a persuasive reason to doubt claimant’s credibility regarding her back condition and the pain it caused her when she worked for the employer.³ EAB, however, finds claimant’s explanation for why she had no job restrictions to be credible; claimant had not needed job restrictions based on her prior employment doing work that was not as physically demanding as a custodian’s work. Audio Record at 11:07 to 12:00. Although claimant did not have orders from her doctor restricting her from specific physical requirements of her job, claimant provided unrefuted, credible testimony that she had degenerative disc disease, experienced pain from custodian work, was unable to complete the work on March 9 due to pain, and had to take additional medication to treat the

¹ Hearing Decision 17-UI-83166 at 3.

² *Id.*

³ *Id.*

pain. Moreover, had claimant quit due to her commute, it is unlikely she would have asked the employer to give her another chance to work after missing part of her shift on March 7, 2017.

The ALJ reasoned that claimant did not pursue the alternative of telling the employer about her medical condition so that the employer could accommodate her condition.⁴ However, there is insufficient evidence in this record to show that such accommodations were more than merely speculative. The employer asserted that it could have trained claimant about proper cleaning techniques and provided her a pole and microfiber to use while cleaning, thus eliminating the need to bend, stoop and carry water in buckets. Audio Record at 23:23 to 24:06. However, claimant's work location did not have the microfiber poles. Even had the employer provided claimant with one, it is not clear that merely giving claimant a pole microfiber cleaner would have eliminated the lifting, bending, stooping and crawling claimant had to do to complete her duties as a custodian.

When claimant quit work, her job duties were exacerbating her back condition. There is insufficient evidence in this record to show that reasonable alternatives were available to claimant other than quitting work. Claimant had tried to perform the work, but was unable to do so without pain. Under these circumstances, a reasonable and prudent person with degenerative disc disease would have concluded that she needed to leave work when she did, and that continuing to work would have continued to cause her pain.

Claimant demonstrated good cause for leaving work when he did. Claimant is not disqualified from receiving unemployment insurance benefits.

DECISION: Hearing Decision 16-UI-56209 is set aside, as outlined above.

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

DATE of Service: June 13, 2017

NOTE: 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.

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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⁴ Hearing Decision 17-UI-83166 at 3.