

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1482

Reversed
No Disqualification

PROCEDURAL HISTORY: On September 19, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 100130). On October 20, 2017, claimant filed a request for hearing. On December 6, 2017, ALJ Meerdink conducted a hearing, and on December 8, 2017 issued Hearing Decision 17-UI-98598, allowing claimant's late request for hearing and affirming decision # 100130. On December 26, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered claimant's written argument when reaching this decision.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the ALJ's findings and analysis with respect to the ALJ's conclusions that claimant established good cause for his late hearing request on decision # 100130 and that he requested a hearing within a reasonable time after the symptoms that caused his late hearing request resolved are **adopted**.

FINDINGS OF FACT: (1) In July 1981, claimant suffered a spinal cord injury and is a quadriplegic because of the injury. He uses a wheelchair and has limited mobility in his arms, hands and fingers, which limit his ability to type. He has no mobility in his back.

(2) Performance Mobility dba United Access employed claimant from October 2000 until August 4, 2017 as a sales manager for the employer's business providing wheelchair accessible vehicles and wheelchair accessible driving controls for disabled people.

(3) In January 2017, claimant's employer was acquired by United Access. Prior to the acquisition, the employer tracked customer data using one accounting software program and weekly meetings, and the employer had a data entry specialist and an additional salesperson to enter that data. Data entry was not one of claimant's job duties. After the acquisition, both employees who had formerly done data entry left the company and the employer did not replace them.

(4) Beginning in March 2017, the employer imposed a new recordkeeping requirement to track customer data. The employer assigned all of the data entry for the original accounting computer program and the new one, used for marketing and sales, to claimant. Each time claimant spoke with a customer, he took notes of his conversation and subsequently entered the customer data into the two computer programs. Claimant had two to 15 customer intakes per day. One of the programs required 20 to 50 fields of data entered. It took claimant 15 to 30 minutes to enter the data for each customer. Each time claimant spoke with a customer after the initial intake, he had to update their information in the computer programs. Claimant worked ten hours per week more than he did before the acquisition, but was unable to complete all the data entry. Claimant's supervisor sometimes helped him with data entry, but claimant and his supervisor could not keep up with the data entry workload. Claimant's other duties included speaking with customers and preparing and giving them quotes for wheelchair accessible vehicles and wheelchair accessible driving controls.

(5) Before the employer assigned him the data entry duties, claimant had experienced some pain in his hands and arms. However, claimant's pain in his back, arms, and hands worsened due to the additional data entry duties. Claimant received medical treatment, including medication, for the pain in his hands and arms. The treatment did not relieve his symptoms.

(6) Claimant reviewed the employer's employee handbook which stated that that it was an employee's responsibility "to notify the HR Manager or your supervisor" of the need for [a reasonable] accommodation. Exhibit 5.

(7) Claimant met weekly with the general manager, who was his immediate supervisor. On a daily basis, claimant told his supervisor he needed assistance in completing the data entry because completing the data entry caused him pain. Claimant requested that the employer allocate additional staff to complete data entry. The supervisor told the regional manager about claimant's request for accommodation. The regional manager told the supervisor that she needed to help claimant complete the data entry. The supervisor assisted with the data entry, but also experienced hand pain due to overusing her hands at work. On one occasion, the regional manager provided a one-hour training regarding how to use the sales software, which did not significantly improve claimant's data entry productivity. The regional manager suggested claimant use voice activation, but using voice activation did not save claimant time completing the data entry.

(8) Claimant continued to request support from his supervisor to complete data entry. Claimant did not contact human resources about staffing or his data entry duties. Claimant's supervisor told the regional manager that claimant was continuing to have difficulty completing the data entry. The regional manager did not respond to additional requests for accommodation.

(9) During July 2017, claimant's supervisor asked the employer's chief operating officer for additional staffing because of the difficulties claimant had completing data entry into the sales software.

(10) During July 2017, the employer gave two existing employees access to the sales software so they could input data. One was able to complete some limited data entry on weekends but the other was not able to add data entry to her already full workload. Their efforts did not significantly reduce claimant's workload.

(11) The regional manager criticized claimant's failure to input all the customer data to claimant's supervisor. However, the employer did not discipline claimant for the rate at which he entered data.

(12) Claimant did not request a leave of absence before he quit.

(13) Claimant was paid on a commission-only basis. Claimant did not receive credit for his sales unless they were recorded in the employer's new sales software program.

(14) On July 24, 2017, claimant gave notice that he would resign on August 4, 2017 because his job duty of completing data entry caused him pain in his hands and arms.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude claimant had good cause to quit 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 is a quadriplegic with limited mobility in his arms, hands and fingers, which is 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 his employer for an additional period of time.

The ALJ concluded that claimant quit work because he was unable to keep up with the data entry the employer expected of him, and that he did not have good cause to quit because he did not contact the employer's human resources department about his workload to request a reasonable accommodation, and did not pursue the alternative of leaving the work undone. Hearing Decision 17-UI-98598 at 4. We disagree that these were reasonable alternatives for claimant when he quit.

The preponderance of the evidence shows claimant quit work because of the pain he experienced and the employer's failure to provide alternatives that would help claimant perform his job duties without pain. The employer implicitly alleged that claimant's pain was attributable to claimant's new wheelchair and not his increased workload. Transcript (December 7, 2017) at 35. Based on the significant increase in claimant's data entry tasks and overall workload after United Access acquired Performance Mobility, and based on claimant's unrefuted testimony about the timing and impact of the data entry on his pain levels, we are persuaded that the new data entry tasks caused claimant's pain. Claimant faced a grave situation at work because of the newly assigned data entry tasks.

We disagree with the ALJ that claimant had reasonable alternatives to quitting work when he did. The record is replete with occasions when claimant complained to his supervisor and when claimant knew his supervisor requested changes on claimant's behalf from the regional manager and the chief operating officer. Moreover, the employee handbook directed employees to make requests for reasonable accommodation to a supervisor, which claimant did. Additionally, there is no evidence in the record to suggest that making additional requests for accommodation to human resources after having made requests to his supervisor, and his supervisor had taken those request to two other levels of management since March 2017, would have been anything but futile. Similarly, taking time off work would have been futile because, without a change in his data entry or overall workload, there is no reason to presume that claimant's pain would not have returned when he returned to work. Nor does the record show claimant would have qualified for medical leave. We also disagree that leaving the work undone was a reasonable alternative for claimant. Although the employer did not formally reprimand claimant for falling behind in the data entry, the regional manager complained to claimant's supervisor about claimant's performance, and failing to input the data may have prevented or delayed receipt of claimant's sales commissions.

When claimant quit work, his job duties were exacerbating his pain. 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 quadriplegic person with limited mobility in his hands and arms would have concluded that he needed to leave work when he did, and that continuing to work would have continued to cause him pain.

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

DECISION: Hearing Decision 17-UI-98598 is set aside, as outlined above.

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

DATE of Service: February 2, 2018

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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