

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0170

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 1 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 121608). Claimant filed a timely request for hearing. On January 18, 2018, ALJ Frank conducted a hearing, and on January 25, 2018 issued Hearing Decision 18-UI-101775, affirming the Department's decision. On February 14, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Dengen, Inc. employed claimant from 1998 until September 25, 2017 as a cashier in a liquor store.

(2) Claimant had not been diagnosed with a medical condition, but experienced pain from standing for most of her nine-hour shifts. Claimant never told the employer she experienced discomfort from standing during her shifts. The employer had the flexibility to offer claimant shorter shifts or fewer days of work per week. There was a place in the office where claimant could sit periodically during her shift.

(3) In late 2016, claimant was threatened by a customer while she was working. That was the first time claimant had been threatened in the liquor store. The employer had a silent alarm, a call button for the police and cameras in the store. The store was located in a strip mall with a busy grocery market and well-lit parking lot.

(4) In approximately June 2017, claimant was alone with two customers in the store when one of the customers began to behave in a belligerent manner and was "talking strange." Audio Record at 20:10-20:24. Claimant told him to leave the store. The customer reacted by lunging toward claimant across the cashier counter and threatening claimant. Claimant pressed the police silent alarm button behind the counter. The customer told claimant he would be back, ran out of the store, and left in a vehicle. Claimant had noticed the person had a sheathed knife on his person, which he did not remove from the sheath during the incident. The police responded to the incident but were not able to identify a suspect. It was a different person than in the 2016 incident. Claimant was shaken by the incident.

(4) Approximately one month later, in early July 2017, claimant told one of the owners that she wanted to quit work, but would work until the employer was able to find a replacement cashier. Claimant feared that the person from the June 2017 incident would return to the store because the police did not identify him. Claimant never told the owner she wanted to quit because she feared for her safety at work or because she experienced pain from standing at work.

(5) The employer found another cashier on September 25, 2017 and claimant left work on that day.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude claimant voluntarily left work without 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.

While the standard for showing good cause to leave work is modified for a claimant who has a permanent or long-term impairment as defined at 29 CFR §1630.2(h), claimant did not show that the modified standard applied to her. OAR 471-030-0038(4). Although claimant testified that she was “on diuretics” and not able to stand nine hours per day without experiencing pain, she also testified that she had not been diagnosed with a long-term or permanent impairment. Audio Record at 21:14-21:55. Nor did claimant otherwise show that she had a serious condition that was long-term or permanent. On this record, there is insufficient evidence to apply the modified standard for showing good cause that applies to claimants with long-term or permanent impairments.

Claimant testified that she quit work, in part, because the police did not find the person who threatened her in June 2017, and she feared he would return to store as she was leaving work. Audio Record at 17:13-17:25, 19:35-20:09. Claimant’s fear for her safety was understandable. However, claimant did not show that her job presented an unreasonable risk of harm to her or that her circumstances had deteriorated over the nineteen years she worked for the employer. Moreover, claimant did not tell the employer she was quitting work due to concerns for her safety. The employer asserted at hearing that it tries to keep its employees safe using cameras and alarms. Audio Record at 24:30-24:46. Given that the employer had taken measures to protect its employees’ safety in the past, and that the incidents were relatively rare having occurred only twice in nineteen years, it was reasonable for claimant to allow the employer the opportunity to address her safety concerns before she quit work. Claimant therefore failed to show that no reasonable and prudent person would have continued to work for the employer for an additional period of time because she feared for her safety at work.

Claimant left work, in part, because she experienced pain from standing for long periods during her nine-hour shifts. Although it is more probable than not that the pain claimant experienced from standing for long periods of time presented a grave situation for claimant, claimant failed to pursue the reasonable

alternative of discussing the problem with the employer before she quit. Claimant could have requested an accommodation, such as shorter shifts or fewer days, which the employer was willing to provide. If those were not satisfactory to claimant, she could have asked to sit for periods during her shift. Accordingly, claimant failed to meet her burden to show that no reasonable and prudent person in her circumstances, interested in maintaining employment, would have at least pursued those reasonable alternatives before quitting.

Claimant voluntarily left work without good cause and is disqualified from receiving unemployment insurance benefits based on this work separation.

DECISION: Hearing Decision 18-UI-101775 is affirmed.

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

DATE of Service: March 13, 2018

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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