

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0534

Affirmed
Disqualification

PROCEDURAL HISTORY: On April 6, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 150833). Claimant filed a timely request for hearing. On May 14, 2018, ALJ Murdock conducted a hearing, and on May 16, 2018 issued Order No. 18-UI-109501, affirming the Department's decision. On May 23, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) FedEx Ground Package System, Inc. employed claimant as a package handler from April 4, 2017 until February 10, 2018.

(2) When the employer hired claimant, he had a bad knee from an injury he had sustained some years earlier while in the military. Claimant experienced lower back pain as a result of compensating for his injured knee.

(3) After claimant began working for the employer, he experienced pain in his back and leg while on duty, which he attributed to his job duties of lifting packages and loading trucks. Claimant treated his pain with aspirin and rest. Claimant brought up his pain to his physician. The physician told claimant that he should not lift weights in excess of 25 pounds and not regularly bend over, which he often did as a package handler. The physician told claimant that he should not be performing the duties required of a package handler.

(4) The employer had a program in which it would modify the work duties of employees whose physical activities were restricted by off-the-job injuries if a physician authorized the modification. The employer had positions which did not require lifting in excess of 25 pounds or regularly bending over. Claimant did not know about the employer's accommodation program and did not seek a physician's authorization for a modified work or discuss his physical limitations with any employer representative. Claimant tried to take his physical limitations into account during his employment by applying for jobs

with the employer that he felt he was able to perform. Claimant was not selected for any of these positions.

(5) On February 10, 2018, claimant voluntarily left work because of the pain he experienced working for the employer.

CONCLUSIONS AND REASONS: Claimant voluntarily left work without good cause.

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 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 P3d 722 (2010). Claimant had a bad knee and back pain that he had experienced for some years, which we assume is 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.

Claimant voluntarily left work because of the pain he experienced working for the employer. However, although claimant might not have been aware of the employer’s precise accommodation program, a reasonable and prudent person with claimant’s impairments would have notified the employer of his physical limitations and inquired into the options, if any, that were available to allow him to continue working for the employer despite his limitations. Had claimant done so, he would have learned of the accommodation program which likely would have enabled him to retain his job. Because claimant did not pursue the alternatives to leaving that were reasonably available to him despite his physical conditions, claimant did not show that he had good cause for leaving work when he did.

DECISION: Order No. 18-UI-109501 is affirmed.

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

DATE of Service: June 21, 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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