

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0552**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 16, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 155452). The employer filed a timely request for hearing. On May 9, 2018, ALJ Scott conducted a hearing, and on May 10, 2018, issued Order No. 18-UI-109112, concluding claimant voluntarily left work without good cause. On May 30, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

**EVIDENTIARY MATTER:** The ALJ admitted Exhibits 1 and 2 into evidence, but failed to mark Exhibit 2 as such. As a clerical matter, we have identified the exhibit based on the ALJ's description of it, marked the documents as Exhibit 2, and, for informational purposes, attached copies of the exhibit to order mailed to the parties. Audio Record ~ 9:45 to 14:30.

**FINDINGS OF FACT:** (1) ADECCO USA Inc., a temporary staffing company, employed claimant and assigned her to work at the office of a client, Vitu, as an administrative assistant. Claimant's assignment began on January 29, 2018 and ended on February 5, 2018.

(2) Claimant's work tasks at Vitu consisted of thumbing through and processing thousands of documents each day using a counter, staple remover, date and time stamp and other office equipment. Claimant was right-handed and shortly after beginning her work assignment at Vitu, began to experience progressively increasing pain in her right shoulder, which she had not experienced before, as well as pain in her left shoulder, which she had experienced intermittently since approximately 2015. Claimant's shoulder pain was worse at night than during the day and caused her difficulty sleeping. Claimant attributed the pain she experienced to the repetitive motion of her job tasks.

(3) Claimant worked six days at Vitu - on January 29, 30, 31 and February 1, 2 and 5, 2018. After claimant left work on Friday, February 2, her right shoulder pain was severe but she hoped that it would abate over the weekend. It did not, it substantially interfered with her sleep and on February 5, 2018, at 4:41 a.m., claimant sent an email to her placement counselor at ADECCO advising her that she intended

to “put in [her] notice” because her repetitive work tasks at Vitu was “hurting her body” and “exacerbating her shoulder injuries.” Exhibit 1. She also suggested that she would be better off “in a receptionist type role for temporary work.” Finally, she stated that she intended to apply for unemployment and “see what happens.” *Id.*

(4) On February 6, 2018, claimant received a text message from her supervisor at Vitu indicating that he understood from claimant’s placement counselor at ADECCO that she was leaving the assignment. Claimant responded by complimenting his team at Vitu and explaining that she wished she could stay but “just couldn’t do the repetitive work, it was killing my shoulders and I couldn’t sleep.” Her supervisor responded that he understood and stated “It is a difficult job.” Exhibit 2.

(5) Later on February 6, 2018, claimant attended a prescheduled doctor’s appointment with her primary care physician and discussed the shoulder pain she was experiencing and its effect on her sleep. He diagnosed “bilateral shoulder joint pain” and referred her to physical therapy. Exhibit 2.

(6) On February 27, 2018, claimant met with a chiropractor, with whom she had treated before, who diagnosed her with “bilateral overuse strain of the rotator cuff” and performed an adjustment and massage for treatment. Exhibit 2. He also demonstrated rotator cuff strengthening exercises for her to perform on her own after the overuse injury improved. Claimant met with him again on April 17, 2018 and he reported that although “[claimant’s] shoulders were feeling somewhat better”, they “were still sore with certain motions.” *Id.*

**CONCLUSIONS AND REASONS:** We disagree with the ALJ. Claimant voluntarily left work with good cause.

Under ORS 657.176(2)(a), (b) and (c), the term "work" means the continuing relationship between an employer and an employee. The date an individual is separated from work is the date the employer-employee relationship is severed. In the case of individuals working for temporary agencies or employee leasing companies, the employment relationship shall be deemed severed at the time that a work assignment ends. OAR 471-030-0038(1)(a)(January 11, 2018). Here, claimant’s work assignment ended on February 5, 2018, her last day and when claimant notified her placement counselor that she intended to end her work assignment at Vitu.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

In Order No. 18-UI-109112, the ALJ concluded that claimant quit work without good cause, reasoning that “there was insufficient evidence to show that claimant faced a grave situation and had no reasonable alternative but to leave work.” Order No. 18-UI-109112 at 3. However, the record shows that the work in question, more likely than not, was unsuitable for claimant and created a grave situation for her and

that the alternatives the ALJ suggested claimant should have pursued before leaving were not actual, concrete and reasonable alternatives to quitting.

ORS 657.190 provides that 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, safety and morals of the individual...as well as their... physical fitness and prior training, [and] experience.” On this record, the nature of the employer’s work, involved daily repetitive work tasks which, after only six days, created a substantial degree of risk to claimant’s health and safety, in the form of bilateral shoulder and rotator cuff pain that became so severe that it substantially interfered with her sleep, required treatment in the form of both therapy and medication and persisted for more than two months after claimant left the assignment in question. More likely than not, the nature of the employer’s work was unsuitable for claimant and, for that reason alone, left her with no reasonable alternative but to quit when she did.

Although the ALJ also reasoned that claimant should have explored with the employer the *possibility* of modifying her job duties to eradicate or minimize her repetitive motions, claimant asserted at hearing that the work tasks that other temporary employees were performing at Vitu were the same as hers - very repetitive and structured with no modifications because they were the essential functions of the temporary worker position. Audio Record ~ 26:00 to 28:25. Also claimant’s placement counselor acknowledged at hearing that she was unaware whether any modifications to claimant’s job duties could have been made. Audio Record ~ 52:45 to 53:30. Accordingly, there is insufficient evidence in this record to establish that a job modification or transfer was an actual, concrete and reasonable alternative that claimant could have pursued. *See Gonzales v. Employment Department*, 200 Or App 547, 115 P3d 976 (2005) (evidence insufficient to show claimant’s theoretical transfer to a different job was a reasonable alternative when no evidence that such a job was available or that claimant was qualified and capable of performing that job).

Viewing the record as a whole, claimant demonstrated that her circumstances were grave and that, when she left work, she had no reasonable alternative in lieu of doing so. Claimant had good cause for leaving work when she did, and she is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

**DECISION:** Order No. 18-UI-109112 is set aside, as outlined above.

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

**DATE of Service: July 3, 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](http://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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