

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0808

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 20, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct, within 15 days of a planned voluntary leaving without good cause (decision # 151817). Claimant filed a timely request for hearing. On July 30, 2018, ALJ Seideman conducted a hearing, and issued Hearing Decision 18-UI-114050, affirming the Department's decision. On August 20, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Artegan LLC, a property management company, employed claimant as an accountant from April 4, 2018 until May 25, 2018.

(2) Claimant had been an accountant for 15 years, but found the work with the employer to be too high volume for him. Claimant believed that he was not adequately performing his job duties. Claimant was experiencing stress and was frustrated because he believed that he was making too many errors and not completing his work.

(3) Claimant was being trained by the employer, and met with his supervisor on a weekly basis to discuss his work. Claimant shared with his supervisor that he was having difficulty with his job duties and she agreed that he was struggling with the work. Claimant's supervisor encouraged him and gave him suggestions as to how to improve his performance. The employer believed that with additional training and time, claimant would be able to satisfactorily perform his job duties.

(4) Claimant saw no solution to the situation. He believed that he would not be able to perform the work, regardless of how much training or how much time to learn he had.

(5) Claimant had a neurological condition. His test results showed that his cognitive abilities were below par and he had some slowness with certain things. Claimant did not tell the employer that he had a neurological condition, nor did he ask the employer to provide him with any accommodations. The employer was unaware that claimant had any neurological problems.

(6) Claimant tendered a letter of resignation on May 14, 2018, with a planned quit date of May 25, 2018. Because claimant was still in training, the employer decided to discharge him on the same day and paid him through May 25, 2018. If claimant had not given notice to quit, the employer would not have discharged him.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant voluntarily left his work without good cause and he is disqualified from receiving benefits.

ORS 657.176(2)(a) and (c) require a disqualification from unemployment insurance benefits for individuals who are discharged for misconduct or quit work without good cause. ORS 657.176(8) provides that when an individual has notified an employer that he will leave work on a specific date, not for good cause, and the employer discharges him, not for misconduct, within 15 days prior to the date of the planned voluntary leaving, the separation is adjudicated as though the planned voluntary leaving had occurred, although the date of the individual's disqualification from benefits is deferred until the week prior to the week of the planned voluntary leaving.

Here, on May 14, 2018 claimant notified the employer that he was quitting work effective May 25, 2018. On May 14, 2018, the employer told claimant that he could take off the rest of the time until May 25, 2018, and paid him through May 25, 2018, his last planned day of work. The Employer testified that it gave claimant the rest of the time off because "there was no point to continue with training if he was going to leave". Recording at 30:00. Therefore, the work separation is a voluntary quit.

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) (January 11, 2018). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). An individual with a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h) 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.

The evidence is uncontroverted that claimant suffered from a neurological condition which prevented him from performing his job responsibilities. Claimant found the work to be too high volume. He was experiencing stress and was unable to make adjustments, which had previously mitigated his neurological condition. At the end of the workday claimant was stressed and frustrated because he was making too many errors and not making enough progress, and after 4 ½ weeks of employment, he was convinced that there was no way that he could make the position with the employer work. Recording at 14:00 to 16:00. Claimant testified that he believed that he would eventually be discharged, regardless of how much training or time he had. Recording at 32:00. However, claimant did not inform the employer

that he suffered from a neurological condition, which interfered with his ability to perform his work, nor did he ask for any accommodations. Recording at 24:00. While the employer agreed that claimant was struggling with his work performance, his work performance was not so poor as to subject him to discipline or endanger his employment, and the employer testified that it believed that with additional training and time claimant would be able to satisfactorily perform his job duties. The employer intended to continue training claimant and retaining him as their accountant. Recording at 29:00-30:25. Considering the totality of the circumstances, including that the employer was willing to continue working with claimant despite the fact that he was struggling, it is more likely than not that a reasonable and prudent person with a neurological disorder, whose condition impaired his ability to fully perform his job duties, would not leave work without first notifying the employer of the nature of his difficulties with the work and exploring his options with the employer. Therefore, claimant did not face such a grave situation that he had no other reasonable alternative but to quit work. Because claimant quit his job without good cause, he is disqualified from receiving unemployment benefits.

DECISION: Order No. 18-UI-114050 is affirmed.

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

DATE of Service: September 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.