

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0900

Affirmed
Disqualification

PROCEDURAL HISTORY: On August 10, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 141819). Claimant filed a timely request for hearing. On September 5, 2018, ALJ Schmidt conducted a hearing, and on September 6, 2018 issued Order No. 18-UI-116185, affirming the Department's decision. On September 14, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: 1. Scenic Fruit Co. Inc. employed claimant as a warehouse supervisor from July 6, 2013 to July 2, 2018.

2. Beginning in approximately mid-2017, claimant began to experience occasional flare-ups of psoriatic arthritis, resulting in pain, discomfort and swelling in his hands that make it difficult for him to use some of the employer's equipment. Claimant's job required him to work in the employer's warehouse freezer, and exposure to cold increased the frequency of the flare-ups. In early to mid-2018, the employer attempted to accommodate claimant by assigning him more office work and less work in the employer's warehouse freezer.

3. In approximately June 2018, claimant learned that he would be able to have surgery on July 3, 2018 to relieve an ongoing and painful hip injury. If the surgery did not resolve the issue, claimant likely would have needed a hip replacement. The doctor treating claimant's psoriatic arthritis advised claimant not to return to work for the employer after the surgery if he was required to continue working in the employer's warehouse freezer.

4. On June 20, 2018, claimant met with the employer to discuss whether he would return to work after he recovered from his hip surgery. The employer reminded claimant that he was eligible for up to 11 weeks short-term disability leave at 60% of his normal pay while he recovered from the surgery if he remained employed. The employer also offered to accommodate claimant by assigning him light duty work after his short-term disability ended, meaning "office work, outside of the freezer environment."

Exhibit 1. The employer also mentioned the possibility of promoting claimant to a permanent office position, so that he “wouldn’t have to be in the freezer as often.” Exhibit 1.

5. On or shortly after June 20, 2018, claimant notified the employer that he was quitting work, effective July 2, 2018. Claimant quit work because he did not know how long he would need to recover from his hip surgery or whether a hip replacement would be necessary, and he was unwilling to return work for the employer if he was required to continue working in the warehouse freezer.

6. Claimant recovered from his hip surgery in approximately two weeks and did not require a hip replacement.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant quit working for the employer without good cause.

If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (January 11, 2018). “Work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a). The date an employee is separated from work is the date the employment relationship is severed. *Id.*

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). Claimant had an ongoing hip injury and psoriatic arthritis, permanent or long-term “physical or mental impairment[s]” as defined at 29 CFR §1630.2(h). A claimant with those impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairments would have continued to work for his employer for an additional period of time.

In the present case, claimant quit working for the employer on July 2, 2018 because he did not know how long he would need to recover from his July 3, 2018 hip surgery or whether a hip replacement would be necessary, and he was unwilling to return work for the employer if he was required to continue working in the warehouse freezer. However, claimant failed to establish that, as of July 2, 2018, his situation was of such gravity that a reasonable and prudent person with his physical impairment would have had no reasonable alternative but to quit work on that date. Rather than quit work on July 2nd, claimant had the reasonable alternative of taking up to 11 weeks short-term disability leave at 60% of his normal pay before determining whether he had recovered from his surgery and, if so, returning to light duty office work that did not require him to work in the employer’s freezer, at least until the employer determined whether it had a suitable permanent position available for claimant that did not require him to work in the freezer.

Claimant quit working for the employer without good cause, and is disqualified from receiving benefits.

DECISION: Order No. 18-UI-116185 is affirmed.

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

DATE of Service: October 19, 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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