

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0904**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 13, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 75823). Claimant filed a timely request for hearing. On September 7, 2018, ALJ R. Shoemake conducted a hearing, and on September 14, 2018, issued Order No. 18-UI-116568, affirming the Department's decision. On September 18, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB, but failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider claimant's argument when reaching this decision.

**FINDINGS OF FACT:** (1) In 2010, claimant was diagnosed with osteoarthritis of both knees.

(2) Walmart Associates, Inc. employed claimant from September 12, 2017 until July 13, 2018 as a pharmacy department manager.

(3) Prior to April 2018, claimant had a partial knee replacement surgery on her right knee due to osteoarthritis. In April 2018, claimant began to experience worsening pain in her left knee. Claimant's doctor released claimant to full time work after the surgery on her right knee, but recommended that claimant be placed on modified work allowing her to sit whenever she needed to alleviate pain and avoid aggravating her osteoarthritis. Exhibit 2 at 2. Claimant's doctor told her that working on cement floors would aggravate her osteoarthritis. Modified work was not available until May 17, 2018, at which time, claimant returned to work.

(4) During May and June 2018, the employer gave claimant permission to sit down when she needed while she was performing her duties as a pharmacy department manager. Despite sitting when she felt she was able to do so during her shift, claimant experienced right knee pain, left foot pain, and worsening pain in her left knee after she returned to work.

(5) On June 21, 2018, claimant saw her doctor regarding her foot and knee pain. The doctor diagnosed claimant with plantar fasciitis of the left foot and a flare of the osteoarthritis in claimant's right knee "probably due to compensating for the left foot pain." Exhibit 2 at 2. Claimant's doctor increased claimant's pain medication to address the pain from plantar fasciitis. Claimant subsequently met with her orthopedic surgeon who recommended claimant have full replacement surgery of her right and left knees.

(6) The pain, swelling and lack of mobility claimant experienced due to the osteoarthritis and plantar fasciitis interfered with her ability to work, walk, sleep, bend her knees, and get in and out of her car. Claimant was not able to perform work that required her to walk and stand for prolonged periods on cement floors without experiencing pain in her knees and foot, and swelling in her knees. In June 2018, claimant requested to take a leave of absence from work due to her medical conditions. Claimant did not receive a response from the employer to her request before her employment ended.

(7) During June 2018, claimant applied for a position as a manager in the employer's electronics department. Claimant expected that she would be able to sit more often during her shift if she were a manager in that department. The employer did not offer claimant the manager position, but did offer claimant a position as an electronics associate. Based on what claimant had observed throughout her employment, the electronics department associates stood during most of their shifts because that department was busy. Claimant sometimes had to assist in the electronics department because that department was so busy, and in July 2018, the electronics department was not fully staffed.

(8) During June 2018, claimant applied for a training coordinator position, which would not have required claimant to be on her feet for prolonged periods. On July 12, 2018, claimant asked a human resources representative when the employer would choose a candidate for the coordinator position. The representative told claimant that the employer had not begun interviews yet for the position. As of July 12, 2018, the employer had not offered claimant an interview for the position.

(9) On July 13, 2018, claimant voluntarily left work because she was no longer able to perform her duties as a pharmacy department manager without causing herself pain and aggravating her medical conditions, and to protect her health.

**CONCLUSION AND REASONS:** We disagree with the ALJ and conclude that claimant voluntarily left work with 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) (January 11, 2018). 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. Claimant had bilateral osteoarthritis in her knees, a permanent physical impairment as defined at 29 CFR §1630.2(h)(1). A claimant with this 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 her employer for an additional period of time.

In Order No. 18-UI-116568, the ALJ concluded that claimant quit work without good cause. She reasoned that although claimant faced a grave situation at work because she could not perform her job as a pharmacy department manager due to her medical condition, she failed to pursue a reasonable alternative of “attempting the position offered [as an electronics department associate] to see if it would work for her.” Order No. 18-UI-116568 at 3. We agree with the ALJ that claimant faced a grave situation at her job, but disagree with the ALJ’s conclusion that she had a reasonable alternative to voluntarily leaving work when she did.

Accepting the position as an associate in the electronics department was not a reasonable alternative to quitting for claimant because the record shows the position was more likely than not unsuitable for claimant, requiring her to stand on the store’s cement floors for at least as long of periods of time as she already did in her position as a pharmacy manager. Claimant’s uncontroverted testimony was that, based on her experience working in the employer’s store, the associates in the electronics department worked more than in the pharmacy department where she was already working. Audio Record at 40:21 to 40:49. Claimant’s description of the heavy workload in the electronics department shows that although claimant would have had a stool to sit on in the department, her opportunities to sit on the stool would be determined by how busy the department was and not by claimant’s need to sit to alleviate her pain. In other words, if the department was busy, claimant would not be able to sit down, no matter what her pain level, even if there was a stool available.

Based on how claimant’s condition worsened while she worked as a pharmacy manager, it was likewise not a reasonable alternative for claimant to continue working at a job that she was physically unable to perform without worsening her medical condition while she waited to see if the employer offered her the training coordinator position. Claimant quit before the employer responded to her request for medical leave. Assuming that the employer would have granted claimant’s request, it was not a reasonable alternative for claimant to take an indefinite medical leave to await the employer’s response to her application for the training coordinator position. Claimant would have been on leave from a position she was unable to perform, and the record does not show that claimant had reason to believe the employer would offer claimant the new position. The employer had recently denied claimant’s application for a managerial position in the electronics department and had not given claimant any indication that she was a strong candidate for the training coordinator position.

Nor was it a reasonable alternative for claimant to take leave to have surgery and see if she could work after surgery and, presumably, physical therapy. Claimant’s inability to perform the pharmacy manager position without worsening her medical condition shows she was more likely than not unable to work in a job that required her to stand on cement floors, even if she had breaks to sit down. At the time claimant quit, she was a manager with modified duties allowing her to sit when she needed to sit. Despite the modification, claimant did lifting and bending and enough standing on cement floors that she developed plantar fasciitis in one foot and required additional surgery for both her knees. We are persuaded by claimant’s testimony that she simply could not continue to work standing on cement floors because she had osteoarthritis in both knees. *See* Audio Record at 22:14 to 23:01.

Given the lack of reasonable alternatives available to claimant, a reasonable and prudent person with the same health condition as claimant would have concluded she had no option but to quit her job when she did.

**DECISION:** Order No. 18-UI-116568 is set aside, as outlined above.

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

**DATE of Service: October 25, 2018**

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.

**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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