

**EMPLOYMENT APPEALS BOARD DECISION**  
**2014-EAB-1733-R**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On September 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 111433). Claimant filed a timely request for hearing. On October 24, 2014, ALJ Lohr conducted a hearing, and on October 29, 2014, issued Hearing Decision 14-UI-27784, affirming the Department's decision. On November 4, 2014, claimant filed an application for review with the Employment Appeals Board (EAB). On December 15, 2014, EAB issued Appeals Board Decision 2014-EAB-1733, reversing Hearing Decision 14-UI-27784 as unsupported by a complete record, and remanding the matter for such other and further proceedings as may be necessary. On February 18, 2015, the Office of Administrative Hearings submitted a complete hearing record. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

**FINDINGS OF FACT:** (1) Central Coast Development employed claimant, last as a motel housekeeper, from July 12, 2013 to August 8, 2014.

(2) Claimant began her employment as a motel kitchen assistant. In late 2013, the employer transferred her to housekeeping, a job that required her to clean an average of ten rooms per shift and bend over constantly to change and check under beds, remove wall plugs or perform other housekeeping tasks. The constant bending over caused claimant to experience headaches, which steadily worsened in intensity and frequency.

(3) In January 2014, claimant's eye doctor diagnosed a cataract condition in her left eye and advised her to have surgery immediately. He also told her that her condition was a contributing cause of the headaches she was experiencing and would worsen over time. Claimant did not have the surgery because she could not afford it and had no medical insurance.

(4) In and after January, claimant repeatedly requested a transfer to performing kitchen or laundry duties which required much less bending over and would help alleviate her headaches. She presented the employer with medical documentation that verified her cataract condition and need for surgery,

explained that surgery would help alleviate her failing eyesight and headache condition and that the constant bending over required by housekeeping duties worsened her headaches. However, the employer was unable to transfer her to performing kitchen or laundry duties because those positions were unavailable and required an employee with adequate vision.

(5) By July, 2014, claimant was nearly blind in her left eye and her headaches were so severe she could no longer perform her housekeeping job. On July 22, 2014, claimant gave the employer notice that she was quitting on August 8, 2014. Claimant quit work that day because performing housekeeping duties caused her headaches to be so intense and frequent that it was necessary to protect her health.

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

To qualify for unemployment benefits, claimant must prove that she quit work for good cause. ORS 657.176(2)(c). “Good cause” is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (August 3, 2011). Claimant had an untreated and worsening cataract condition in her left eye for more than seven months before she quit work that likely constituted a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). Therefore, we analyzed claimant’s decision to leave work using the standard of a reasonable and prudent person with the characteristics and qualities of an individual with such impairment. OAR 471-030-0038(4).

Claimant quit work for health reasons, specifically, “the headaches were so bad. I couldn’t do the housekeeping from the continual bending over and the fast pace moving around the room.” Transcript at 15, 17, 18. In Hearing Decision 14-UI-27784, after finding that claimant did not have a “long-standing or permanent physical impairment”, the ALJ concluded claimant left work without good cause, reasoning, in relevant part,

...Claimant testified that she asked the employer for a transfer from housekeeping to the kitchen or laundry facility. The employer’s witness testified that claimant never requested a transfer. Claimant contended she gave the employer a doctor’s note explaining her medical condition. The employer denied receiving a doctor’s note explaining claimant’s medical condition...Because the [evidence] was equally balanced, claimant, the party with the burden of persuasion, cannot prevail.

Hearing Decision 14-UI-27784 at 2, 3. However, the employer’s witness did not testify that claimant “never requested a transfer.” At hearing, claimant testified that she repeatedly asked the assistant manager for a transfer out of housekeeping. Transcript at 30. When the assistant manager was specifically questioned by the ALJ about whether claimant requested a transfer, rather than deny that claimant had, she responded, “I don’t recall.” Transcript at 28. Nor did the assistant manager specifically deny “receiving a doctor’s note explaining claimant’s medical condition.” Claimant testified that she gave medical documentation of her condition and need for surgery to a supervisor and the assistant manager personally verified to claimant that she had received that documentation. When questioned by claimant about that conversation, rather than deny that it occurred, the assistant manager responded that she did not “recall” it. Transcript at 29-30. Absent a reason to conclude claimant was not a credible witness and viewing the record as a whole, the employer did not dispute claimant’s

assertions on those issues and the evidence was not “equally balanced” as the ALJ concluded. More likely than not, the employer received documentation of claimant’s medical condition and need for surgery and denied claimant’s requests for a transfer to performing kitchen or laundry duties less aggravating to claimant’s headache condition because, as the assistant manager testified, those positions were unavailable and required an employee with adequate vision. Transcript at 29.

Claimant had a cataract condition in her left eye that caused her headaches and required surgery to correct which claimant could not afford. The headaches were aggravated by claimant’s housekeeping job that required her to constantly bend over and worsened to the point she could no longer perform it. By August 2014, claimant was nearly blind in her left eye and to see well enough to even attempt to perform her housekeeping job she had to use nonprescription eyeglasses to enhance the vision in her right eye which made her nauseous. Claimant presented the employer with medical documentation of her condition and repeatedly requested a transfer to kitchen or laundry duties that she believed did not require her to constantly bend over and could be performed with her impaired vision. However, the employer was unable to transfer her to those positions because they were unavailable and, in the employer’s experience, required an employee with adequate vision. There was no evidence that any sort of leave was available to claimant and even if leave without pay was available, it was not a reasonable alternative to quitting. *See, Sothras v. Employment Division*, 48 Or App 69 (1980)(leave without pay for an unknown and possibly protracted period is not a reasonable alternative to quitting work). Under the circumstances described, claimant faced a situation of such gravity she had no reasonable alternative but to quit.

Claimant voluntarily left work with good cause and is not disqualified from receiving unemployment insurance benefits on the basis of her work separation.

**DECISION:** Hearing Decision 14-UI-27784 is set aside, as outlined above.<sup>1</sup>

Susan Rossiter and Tony Corcoran;  
J. S. Cromwell, not participating.

**DATE of Service:** April 6, 2015

**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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<sup>1</sup> This decision reverses a hearing decision that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.