

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0192**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On January 15, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 70309). Claimant filed a timely request for hearing. On February 17, 2015, ALJ Clink conducted a hearing, and on February 18, 2015 issued Hearing Decision 15-UI-33668, affirming the Department's decision. On February 21, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered the entire hearing record and the parties' written arguments in reaching this decision.

**FINDINGS OF FACT:** (1) Mt. Hood Community College employed claimant from August 26, 2013 to December 12, 2014 as a senior human resources generalist.

(2) Claimant had a chronic migraine condition since he was an adolescent.

(3) In September 2013, one of the employer's three human resources generalists resigned. Her duties were reassigned to claimant and a second human resources generalist.

(4) In 2013, the employer assigned claimant the duties of a full-time class composition position in addition to his regular duties.

(5) In March 2014, claimant began experiencing neck and shoulder pain, hip pain, and more frequent migraines. He received medical treatment for the migraines and began to receive treatment for anxiety and depression. Claimant attempted to manage his migraines and mental health conditions with yoga, meditation, diet, supplements and medications.

(6) On April 30, 2014, the employer approved claimant's request for intermittent family medical leave for his migraine condition, permitting him to miss one day of work two to three times per month due to migraines and medical appointments.

(7) In May 2014, the employer discharged a full-time recruiter and assigned his duties to claimant and one other human resources generalist without reducing claimant's regular workload.

(8) Claimant informed the employer's human resources director during May and July 2014 that his workload was unmanageable and causing him migraines and stress. The employer did not reduce claimant's workload or hire temporary employees to perform any of claimant's duties.

(9) Claimant informally requested that he be permitted to work part time or telecommute due to his migraines and stress. The employer was not willing to allow claimant to telecommute or work part time because it required a full-time senior human resources generalist. During August 2014, upon his doctor's recommendation, claimant began to seek other less stressful positions with the employer and elsewhere. Exhibit 1.

(10) On August 29, 2014, the other senior human resources generalist quit, and claimant began to perform her duties in addition to his own. Claimant began to experience weekly migraines lasting two to three days. Claimant was unable to work when he experienced migraines. The migraines impaired claimant's vision, judgment, and ability to focus, and caused him pain, nausea, photosensitivity, insomnia and exhaustion. Exhibit 1.

(11) The employer did not begin recruiting for new human resources employees during September 2014. On September 29, 2014, claimant gave the employer notice that he would quit on November 14, 2014 due to medical reasons.

(12) On October 24, 2014, the employer began recruiting for two senior human resources generalist positions.

(13) On November 3, 2014, claimant began taking an experimental migraine medication because the other medications he tried were ineffective.

(14) On November 6, 2014, claimant offered to extend his resignation date to December 12, 2014. Claimant's offer was contingent on the employer's approval of claimant's request to accommodate his medical condition by allowing him to work part time, three days per week.

(15) On November 7, 2014, claimant submitted his accommodation request, and the employer granted his request until December 12, 2014. At the time claimant's employment ended, the employer was not willing to allow a senior human resources generalist to work part time on a long term basis. Claimant left work on December 12, 2014. He experienced less stress and fewer migraines after he quit work.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that claimant quit work with good cause.

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 would have

no reasonable alternative but to leave work. OAR 471-030-0038(4) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Claimant suffered from a chronic migraine condition,<sup>1</sup> a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h). A claimant with that 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 his employer for an additional period of time.

It is undisputed that claimant’s workload increased significantly during 2014, and that he simultaneously experienced an increase in the frequency, duration, and severity of his migraines, in addition to symptoms of depression and anxiety. His health worsened to the point where he required intermittent medical leave, medication and mental health treatment, and his doctor recommended he seek other work. Claimant repeatedly complained to his supervisor about his workload and the impact on his health, but the supervisor continued to allow other employees’ duties to shift to claimant’s workload when those employees quit. Claimant sought treatment for his migraines and mental health issues, but the treatment was ineffective. In Hearing Decision 15-UI-33668, the ALJ nevertheless concluded that claimant quit work without good cause because “the claimant could have formally requested accommodation with part-time work under ADA and taken extended FMLA before he resigned from work.”<sup>2</sup>

However, the record fails to show that the employer would have granted an accommodation for part-time work under the ADA, or that taking extended FMLA would have improved claimant’s health or working conditions. Claimant’s supervisor, the employer’s director of human resources, told claimant that he could not work part time or telecommute, and testified at hearing that the employer needed a full-time employee working in claimant’s position, and “it would have been hard to operate at three days a week on an ongoing basis.” Audio Record at 12:42 to 13:13. Nor do we find requesting additional medical leave a reasonable alternative to quitting. Claimant argued at hearing that, “taking a month off would have only meant that [claimant] would come back to a ‘pile of work’ that no one was going to be able to do.” Audio Record at 26:25 to 26:42. Given that the employer specifically assigned new duties to claimant, and did not reassign his duties or hire temporary or replacement employees to lessen claimant’s workload when he complained about the impact of his workload on his health, it is more likely than not that taking extended medical leave would not have resolved claimant’s situation.

In sum, the record shows that claimant’s only alternative to quitting work was to continue working with the same workload, and thereby exacerbating his migraine condition and affecting his mental health. No reasonable and prudent person with a migraine condition would have chosen such an alternative, and continued to work for the employer for an additional period of time. Claimant therefore quit work with good cause, and is not disqualified from receiving benefits based on his work separation from the employer.

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<sup>1</sup> Claimant also experienced stress, depression and anxiety. However, the record does not show those conditions were, for claimant, permanent or long-term “physical or mental impairments” as defined at 29 CFR §1630.2(h).

<sup>2</sup> Hearing Decision 15-UI-33668 at 3.

**DECISION:** Hearing Decision 15-UI-33668 is set aside, as outlined above.<sup>3</sup>

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

**DATE of Service:** April 9, 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>3</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.