

State of Oregon  
**Employment Appeals Board**  
875 Union St. N.E.  
Salem, OR 97311

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0440**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On February 24, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 81054). The employer filed a timely request for hearing. On April 6, 2015, ALJ Triana conducted a hearing, and on April 10, 2015 issued Hearing Decision 15-UI-36710, concluding claimant voluntarily left work without good cause. On April 17, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) NPC International, Inc. employed claimant as a shift leader at one of its Pizza Hut locations from October 3, 2014 to December 31, 2014.

(2) Claimant had previously worked for the employer until she left work for another work opportunity in 2013. She agreed to resume working for the employer on a temporary basis to cover for an employee on parental leave. Claimant wanted to work as a cook, and did not want to assume a leadership role, but agreed to work as a shift leader because the employer had no available cook positions.

(3) Claimant was dissatisfied with her employment. While undergoing training at one of the employer's other facilities the facility failed a health inspection. Claimant held herself to a higher standard and was unhappy to be trained in a facility that had not passed inspection. Claimant worked with a small group of other employees at the facility to which she was assigned. Claimant felt she worked harder, followed policies, and performed her job better than the other employees, and felt that "it was me against them" much of the time. Transcript at 8.

(4) Claimant had a history of migraine headaches and shoulder problems. Claimant experienced an increase in the frequency of her migraines, which her physician attributed to work-related stress. Claimant took medication for her migraines and called in sick when they were too severe to work. Claimant's shoulder problems were also aggravated by her work and she took medication to treat her

shoulders when necessary. Claimant felt that the shoulder problems were not so severe that she could not work through them.

(5) In mid-December 2014, claimant and a driver were the only scheduled employees during a very busy day shift, on which they were "slammed" with orders. Transcript at 9-10. Because the facility was so busy, claimant was unable to complete some prep and cleaning tasks, and stayed an hour after the end of her shift to help complete them. The workers who were coming on shift were critical of claimant for failing to complete all the work and were "bad mouthing" claimant because of it. Transcript at 10. The facility manager later confronted claimant after hearing she had left work that day "with an attitude," and asked her if anything was wrong. Transcript at 10.

(6) On December 15, 2014, claimant notified the employer that she planned to quit work in two weeks. Claimant did not include any complaints or concerns about her working conditions, the facility or her coworker in her resignation letter. Claimant's resignation was effective December 31, 2014.

(7) Prior to leaving work, claimant did not complain to the facility manager, area managers, general manager, human resources manager, or general human resources department about any of her concerns about the facility, working conditions or coworkers. Claimant had contact with those individuals during her previous term of employment and, although she believed her contact with management was mentioned during her pre-employment screening in 2014, she was not disciplined or retaliated against because of her contacts with them during her previous term of employment. Claimant did not notify the employer that she had migraines and shoulder problems, nor did she mention that her conditions were aggravated because of her work or ask for a leave of absence to rest or recover from them beyond taking sick days when necessary. The employer had at least three facilities, all of which were staffed with different workers, but claimant did not ask the employer to transfer her to a different location so she could get away from the coworkers she thought were "bad mouthing" her.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant voluntarily left work without 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) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Claimant had migraines and a shoulder injury, both of which presumably constitute permanent or long-term "physical or mental impairments" 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 her employer for an additional period of time.

Claimant had numerous concerns about her working conditions and the effect her work had on her pre-existing health problems. However, claimant never mentioned any of her concerns to the employer's managers, area managers, human resources department or manager, and never gave the employer the opportunity to address her concerns. Claimant never asked the employer to try to alleviate her concerns

about her coworkers or working conditions by transferring her to a different location so she could work with different staff. A reasonable and prudent person with the qualities and characteristics of an individual who suffers from migraines and a shoulder injury, exercising ordinary common sense, would not quit work because of her coworkers and working conditions without first giving the employer some opportunity to address and alleviate the conditions that caused her concerns. Nor did claimant prove by a preponderance of the evidence that doing so would have been a futile or unreasonable exercise.

Claimant voluntarily left work without good cause. Claimant is disqualified from receiving unemployment insurance benefits because of her work separation.

**DECISION:** Hearing Decision 15-UI-36710 is affirmed.

Susan Rossiter and J. S. Cromwell;  
D. H. Hettle, *pro tempore*, not participating.

**DATE of Service:** June 24, 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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