

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0905**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 10, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 94329). Claimant filed a timely request for hearing. On September 6, 2018, ALJ S. Lee conducted a hearing, and on September 12, 2018 issued Order No.18-UI-116444, reversing the Department's decision. On September 18, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Northwest Restaurant Ventures LLC, doing business as Burger King, employed claimant from October 2, 2017 until May 1, 2018, last as a person in charge.

(2) During claimant's employment, she had health problems. Stress aggravated claimant's health problems.

(3) As of March 2018, claimant was working between 35 and 40 hours per week for the employer. Claimant earned \$13 per hour. Around that time, claimant determined that she needed to work more hours per week than the employer scheduled her for in order to pay down some outstanding bills.

(4) Sometime in approximately March 2018, claimant accepted a second job with Roundtable Clubhouse. At this second job, claimant worked 35 to 40 hours per week in addition to the 35 to 40 hours per week she worked for the employer. At Roundtable, claimant earned \$13 per hour to start, but Roundtable had committed to her that her pay would be increased to \$15 per hour after she had worked for it for approximately one month...

(5) During March and April 2018, claimant worked at both jobs. In total, claimant was working approximately 70 to 80 hours per week at both jobs. The long hours that claimant was working aggravated her health problems and she became "too worn out." Audio at ~8:50. Around the end of April 2018, claimant decided she needed to drop one of the two jobs she was working at to protect her health. Claimant decided to keep the job at Roundtable since she anticipated she would shortly earn \$2 more per hour from it than she earned working for the employer.

(6) On May 1, 2018, claimant notified the employer's general manager that she had decided to quit working for the employer. After that date, claimant continued working for Roundtable.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work for 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 his employer for an additional period of time.

The employer did not dispute claimant's testimony that she suffered from several health issues, nor that work-related stress aggravated those health issues. The employer also did not dispute claimant's testimony that financial exigencies had required her to take a second job, which resulted in her working between 70 and 80 hours total each week, and that, by May 2018 she was unable to continue working at both jobs because working those long hours exacerbated her health problems and jeopardized her health. It appears more likely than not that working such long hours was untenable given claimant's health issues and doing so constituted a situation of gravity for claimant. On these facts, a reasonable and prudent person whose health required her to give up one of the two jobs she was working would have given up working for the employer when, although both jobs required her to work an equivalent number of hours, continuing to work at the other job had a reasonable likelihood of paying her two dollars more per hour than she would be paid if she continued to work only for the employer. A reasonable and prudent person in claimant's situation would have left work for the employer for the reasons that claimant did and when claimant did.

Claimant showed good cause for leaving work when she did. Claimant is not disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 18-UI-116444 is affirmed.

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

**DATE of Service:** October 23, 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](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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