

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0158

Reversed and Remanded

PROCEDURAL HISTORY: On November 14, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #130207). Claimant filed a timely request for hearing. On January 15, 2014, ALJ Bear conducted a hearing, and on January 17, 2014 issued Hearing Decision 14-UI-08714, concluding claimant voluntarily left work with good cause. On January 27, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted written argument to EAB. The employer failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

CONCLUSIONS AND REASONS: Hearing Decision 14-UI-08714 is reversed, and this matter remanded to the Office of Administrative Hearings for additional evidence.

This matter is before EAB to determine whether claimant should be disqualified from benefits because she quit 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). 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.

In Hearing Decision 14-UI-08714, the ALJ concluded claimant voluntarily left work with good cause. The ALJ reasoned that claimant acted reasonably by quitting and relocating to accept free housing in

Texas because she was behind in paying her mortgage and other bills and her house was in foreclosure.¹ The record showed claimant was not facing imminent eviction, but could not afford to stay in her house because she could not afford to pay the utility bills. Under some circumstances, an individual who quits work to move out of town to avoid becoming homeless may be able to show good cause for quitting work. However, that individual must demonstrate that she had no reasonable alternatives to quitting. Here, the ALJ failed to develop the record as to whether claimant had reasonable alternatives to quitting work to avoid becoming homeless. The record shows claimant could not afford to live in her house, but does not show that claimant was unable to afford to live near work. The ALJ did not ask claimant about her income, including child support, and how much she could afford to pay for housing were she to stop paying her mortgage and move out of her house. The record does not show what, if any, efforts claimant made to secure housing within commuting distance of her job with the employer. Although the record shows claimant had immediate family members living in Albany, Oregon, the ALJ did not ask claimant if she had housing options with friends or relatives near work. Moreover, the record does not show how a short sale of claimant's house would have affected her financial situation. In the absence of evidence showing claimant could not afford to live within commuting distance of her place of employment, and that claimant therefore had to quit work to avoid homelessness, the record fails to show whether claimant had good cause to quit work when she did.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop the record necessary for a determination of whether claimant quit work with good cause, Hearing Decision 14-UI-08714 is reversed, and this matter is remanded for development of the record.

DECISION: Hearing Decision 14-UI-08714 is set aside, and this matter remanded for development of the record.

Susan Rossiter and D. E. Larson;
Tony Corcoran, not participating.

DATE of Service: February 26, 2014

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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: The above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.

¹ Hearing Decision 14-UI-08714 at 2.