

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0975

Reversed & Remanded

PROCEDURAL HISTORY: On April 16, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 90803). Claimant filed a timely request for hearing. On May 13, 2014, ALJ Sime conducted a hearing, and on May 15, 2014, issued Hearing Decision 14-UI-17755, affirming the administrative decision. On June 4, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 14-UI-17755 is reversed, and this matter remanded for additional proceedings.

A claimant who voluntarily leaves work 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). OAR 471-030-0038(5)(d), reduction in the rate of pay, provides:

If an individual leaves work due to a reduction in the rate of pay, the individual has left work without good cause unless the newly reduced rate of pay is ten percent or more below the median rate of pay for similar work in the individual’s normal labor market area. The median rate of pay in the individual’s labor market shall be determined by employees of the Employment Department adjudicating office using available research data compiled by the department.

In Hearing Decision 14-UI-17755, the ALJ found that the employer reduced claimant’s salary from \$18 per hour to \$12.50 per hour, while making no change in claimant’s job duties or work hours. The ALJ concluded that claimant quit her job because she was unwilling to accept the reduced salary and because

she believed the employer did not want her to continue working, and that these reasons did not constitute good cause for leaving work. The ALJ failed to consider the applicability of OAR 471-030-0038(5)(d) however. The record contains no evidence as to how claimant's newly reduced rate of pay compares to the median rate of pay for similar work in the claimant's labor market area. This matter must be remanded to obtain testimony or other evidence from a Department adjudicating officer regarding the median rate of pay for work similar to that performed by the claimant in claimant's normal labor market area.

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 the record developed at 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); *Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop the record necessary to determine whether the salary reduction imposed on claimant constituted good cause for voluntarily leaving work under OAR 471-030-0038(5)(d), Hearing Decision 14-UI-17755 is reversed, and this matter remanded for further development of the record.

DECISION: Hearing Decision 14-UI-17755 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 12, 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.