

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1012

### *Reversed & Remanded*

**PROCEDURAL HISTORY:** On February 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 111713). Claimant filed a timely request for hearing. On May 8, 2014, ALJ Kangas issued Hearing Decision 14-UI-17084, dismissing claimant's request for hearing as untimely. On May 16, 2014, the Office of Administrative Hearings (OAH) issued a letter entitled, "Cancellation of Hearing Decision," vacating Hearing Decision 14-UI-17084 because it was issued in error. On June 2, 2014 ALJ Frank conducted a hearing, and on June 4, 2014 issued Hearing Decision 14-UI-18962, affirming the Department's decision. On June 11, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant failed to certify that it provided a copy of its written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2). However, because we reverse and remand for additional evidence, claimant may provide a copy of the new information to the other parties and offer the new information into evidence during further proceedings.

**CONCLUSIONS AND REASONS:** Hearing Decision 14-UI-18962 is remanded to OAH for additional evidence.

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 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 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.

This matter comes before EAB to determine whether claimant should be disqualified for benefits based on his voluntary leaving from work at Best Buy.

Claimant had two part time jobs that paid the same hourly wage. One employer, Wells Fargo, gave claimant a promotion to full time work. Claimant quit part time work at Best Buy, alleging that the work schedules conflicted with his Wells Fargo and he wanted to retain the full time work at Wells Fargo. At some point either before or after claimant gave his two week notice to Best Buy, Wells Fargo took claimant off its schedule pending an investigation. Claimant did not know at that time if or when he would return to work for Wells Fargo.

The record does not show when Wells Fargo gave claimant the promotion, when it expected claimant to begin working full time, or the days and hours either employer expected him to work. Additionally, claimant testified that his two week notice, and his employment with Best Buy, ended on January 25, 2014, after Best Buy granted an extension to claimant's original notice to quit. The record does not establish when claimant gave the employer his original two-week notice, and thus does not show if claimant gave the initial two-week notice to Best Buy before or after he learned that his hours would be eliminated and his job at Best Buy would be in jeopardy. Moreover, the record does not show when Wells Fargo began its investigation or the reason for it, which may be relevant if it was the result of schedule conflicts between his two jobs.

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 is disqualified from receiving benefits based on his work separation from the employer, Hearing Decision 14-UI-18962 is reversed, and this matter is remanded for development of the record.

**DECISION:** Hearing Decision 14-UI-18962 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** July 17, 2014

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 14-UI-18962 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

**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 [court.oregon.gov](http://court.oregon.gov). Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.