

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1021

*Hearing Decisions 14-UI-19082 and 14-UI-19084
Reversed & Remanded*

PROCEDURAL HISTORY: On February 25, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 100254). On February 26, 2014, the Department served notice of an administrative decision assessing a \$2636 overpayment, 21 penalty weeks, and a \$395.40 monetary penalty (decision # 195057). Claimant filed timely requests for hearing on both decisions. On June 5, 2014, ALJ Kirkwood conducted hearings and issued Hearing Decision 14-UI-19082, affirming decision # 100254, and Hearing Decision 14-UI-19084, assessing a \$2382 overpayment, and no penalty weeks or monetary penalty. On June 11, 2014, claimant filed applications for review of Hearing Decisions 14-UI-19082 and 14-UI-19084 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 14-UI-19082 and 14-UI-19084. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2014-EAB-1020 and 2014-EAB-1021).

CONCLUSIONS AND REASONS: Hearing Decisions 14-UI-19082 and 14-UI-19084 are reversed, and these matters remanded to the Office of Administrative Hearings (OAH) for further proceedings.

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). If an individual quits work due to a reduction in hours, he has left work without good cause unless continuing to work substantially interferes with return to full time work, or unless the cost of working exceeds the amount of remuneration received. OAR 471-030-0038(5)(e) (August 3, 2011). Otherwise, “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). 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 his employer for an additional period of time.

ORS 657.310(1) provides that an individual who received benefits to which the individual was not entitled is liable to either repay the benefits or have the amount of the benefits deducted from any future benefits otherwise payable to the individual under ORS chapter 657. That provision applies if the benefits were received because the individual made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, regardless of the individual's knowledge or intent. *Id.* An individual who willfully made a false statement or misrepresentation, or willfully failed to report a material fact to obtain benefits, may be disqualified for benefits for a period not to exceed 52 weeks. ORS 657.215. In addition, an individual who has been disqualified for benefits under ORS 657.215 for making a willful misrepresentation is liable for a penalty in an amount of at least 15, but not greater than 30, percent of the amount of the overpayment. ORS 657.310(2). The length of the penalty disqualification period and monetary penalty are determined by applying the provisions of OAR 471-030-0052 (February 23, 2014).

In Hearing Decision 14-UI-19082, the ALJ found that in mid-May 2013, the employer gave claimant an option to work reduced hours or be laid off from work, and that on May 19, 2013 claimant submitted a resignation letter indicating that he was choosing to be laid off rather than work reduced hours.¹ The ALJ concluded that claimant quit work, and that he did so without good cause under OAR 471-030-0038(4).² In Hearing Decision 14-UI-19084, the ALJ found that claimant reported to the Department that he was laid off due to a lack of work, and claimed and was paid \$2382 in benefits for the weeks from May 19 through August 31, 2013 (weeks 21-13 through 35-13).³ The ALJ concluded that because Hearing Decision 14-UI-19082 disqualified claimant from receiving benefits for weeks 21-13 through 35-13, claimant received \$2382 in benefits to which he was not entitled, and is liable under ORS 657.310(1) to either repay or have deducted from any future benefits otherwise payable.⁴ However, the ALJ concluded that claimant did not willfully report to the Department that he was laid off due to a lack of work to obtain benefits, and therefore is not subject to penalty weeks or a monetary penalty.⁵

We agree with the ALJ that claimant quit work, did not willfully report to the Department that he was laid off due to a lack of work to obtain benefits, and therefore is not subject to penalty weeks or a monetary penalty. However, claimant quit work due to a reduction in hours. He therefore quit work with good cause under OAR 471-030-0038(5)(e) if continuing to work would have substantially interfered with his return to full time work, or the cost of working the reduced hours would have exceeded the amount of remuneration he would have received. However, the ALJ failed to conduct a full inquiry into the facts necessary for consideration of those issues. *See* Transcript at 12, 21. As a result, we cannot determine whether claimant quit work without good cause and is disqualified from receiving benefits for weeks 21-13 through 35-13, and therefore received \$2382 in benefits to which he

¹ Hearing Decision 14-UI-19082 at 1.

² *Id.* at 2.

³ Hearing Decision 14-UI-19084 at 2.

⁴ *Id.* at 3. The ALJ also found that claimant accurately reported his earnings for the weeks from February 10 through 23, 2013 (weeks 07-13 and 08-13) and concluded that claimant therefore was not overpaid benefits for those weeks. We agree with the ALJ's findings and conclusions regarding weeks 07-13 and 08-13.

⁵ *Id.*

was not entitled, and is liable under ORS 657.310(1) to either repay or have deducted from any future benefits otherwise payable.

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 without good cause, and therefore was overpaid benefits for weeks 21-13 through 35-13, Hearing Decisions 14-UI-19082 and 14-UI-19084 are reversed, and this matter is remanded for development of the record.

DECISION: Hearing Decisions 14-UI-19082 and 14-UI-19084 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: July 17, 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 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.