

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1184

### *Reversed & Remanded*

**PROCEDURAL HISTORY:** On May 23, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 103326). The employer filed a timely request for hearing. On June 26, 2014, ALJ Seideman conducted a hearing, and on July 2, 2014 issued Hearing Decision 14-UI-20734, affirming the Department's decision. On July 9, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Hearing Decision 14-UI-20734 is remanded to OAH for additional evidence.

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 P3d 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.

At hearing, claimant testified that she left her job at Webfoot Bar and Grill to take a position with a new employer. OAR 471-030-0038(5) provides:

(a) If an individual leaves work to accept an offer of other work good cause exists only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to continue, and must pay:

- (A) An amount equal to or in excess of the weekly benefit amount; or
- (B) An amount greater than the work left.

The ALJ did not analyze claimant's work separation under the provisions of OAR 471-030-0038(5), and did not obtain the evidence necessary to determine whether claimant had good cause to leave her position at Webfoot Bar and Grill to accept an offer of other work. Specifically, the ALJ failed to inquire how much claimant earned at the Webfoot Bar and Grill, how much she expected to earn at the new job, how much was her weekly benefit amount, and whether the new job was reasonably expected to continue. 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 her work separation from the employer, Hearing Decision 14-UI-20734 is reversed, and this matter is remanded for development of the record.

**DECISION:** Hearing Decision 14-UI-20734 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** July 30, 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](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.

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