

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1275

Reversed & Remanded

PROCEDURAL HISTORY: On July 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct, within 15 days of claimant's planned quit without good cause (decision # 100021). Claimant filed a timely request for hearing. On July 24, 2014, ALJ M. Davis conducted a hearing, and on July 25, 2014 issued Hearing Decision 14-UI-22228, concluding that claimant quit work without good cause. On July 28, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. Claimant failed to certify that she provided a copy of her written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). EAB therefore did not consider claimant's argument when reaching this decision.

CONCLUSIONS AND REASONS: Hearing Decision 14-UI-22228 is reversed, and this matter remanded to the Office of Administrative Hearings (OAH) for further proceedings consistent with this order.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of 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" typically is defined 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). For an individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR §1630.2(h)) good cause for voluntarily leaving work is such that a reasonable and prudent person with the characteristics and qualities of such individual, would have no reasonable alternative but to leave work.¹ Both standards are objective. *McDowell v.*

¹ 29 C.F.R. §1630.2(h) defines "physical or mental impairment" as:

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.

When an individual has notified an employer that the individual will quit work on a specific date and the quit would be with good cause, but the individual quit work without good cause no more than 15 days prior to the planned quit, then then the work separation is adjudicated as if the actual quit had not occurred and the planned quit had occurred. ORS 657.176(6). However, the individual shall be ineligible for benefits for the period including the week in which the actual quit occurred through the week prior to the week of the planned quit. *Id.*

In Hearing Decision 14-UI-22228, the ALJ found as fact that claimant notified the employer on June 6, 2014 that she was quitting work, effective June 20, 2014, after the store manager gave claimant a written warning for not giving a subordinate employee a written warning, and informed claimant that her request for June 30, 2014 off from work was denied, although claimant had not been scheduled to work that day.² The ALJ also found as fact that on June 12 or 13, 2014, the employer's director of operations offered to transfer claimant to a different store where she would not have to work with the same store manager, and that claimant quit work on June 14, 2014 after rejecting the offer.³ The ALJ concluded that claimant quit work without good cause, asserting that the store manager's behavior on June 6 was not of such gravity that claimant had no reasonable alternative but to quit when she did.⁴ The ALJ asserted that claimant had the reasonable alternative of attempting to work at the other store to see if she still had the same concerns, claimant's testimony that that she did not feel supported by the director of operations, who oversaw employees at the other store, notwithstanding.⁵

As a preliminary matter, we note that the ALJ did not conduct an inquiry into whether claimant had a permanent or long-term physical impairment, as defined under 29 CFR §1630.2(h). We also note that the claimant did not testify that the store manager merely denied her request for a day off, but that store manager lied in telling her that her request was denied because she already had been scheduled to work that day. Audio Record at 10:00. More importantly, however, claimant did not testify that she quit work merely because of the store manager's behavior on June 6, 2014, or that she rejected the director of operation's offer to transfer her to another store merely because she did not feel supported by him. She testified that she quit work due to a "hostile work environment"⁶ resulting from a "multitude"⁷ of

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as an intellectual disability (formerly termed "mental retardation"), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

² Hearing Decision 14-UI-22228 at 1-2.

³ *Id.* at 2.

⁴ *Id.*

⁵ *Id.*

⁶ Audio Record at 7:45.

incidents of mistreatment by not only the store manager, but other managers and employees, and the director of operations himself. Audio Record at 11:00, 13:10, 17:00, 20:00, 23:45, 26:30. The ALJ did not conduct a sufficient inquiry into those incidents, whether claimant complained about the incidents, or the employer's responses to her complaints, which is necessary for consideration of whether accepting the transfer to another store, where claimant still would have worked under the direction of the director of operations, was a reasonable alternative to quitting. Absent such inquiries, we cannot determine whether claimant quit work with good cause on June 14, 2014 or, alternatively, whether her planned quit on June 20, 2014 would have been with good cause.

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 or, alternatively, whether her planned quit would have been with good cause, Hearing Decision 14-UI-22228 is reversed, and this matter is remanded for development of the record.

DECISION: Hearing Decision 14-UI-22228 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: September 3, 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.

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⁷ *Id.* at 10:25.