

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1390

Reversed & Remanded

PROCEDURAL HISTORY: On July 10, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 150555). Claimant filed a timely request for hearing. On August 1, 2014, ALJ M. Davis conducted a hearing, and on August 5, 2014 issued Hearing Decision 14-UI-22821, concluding that claimant quit work with good cause. On August 20, 2014, the Department filed an application for review with the Employment Appeals Board (EAB).

The Department submitted written argument with its application for review. However, the Department failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the Department's argument when reaching this decision.

CONCLUSIONS AND REASONS: Hearing Decision 14-UI-22821 is reversed, and this matter remanded to the Office of Administrative Hearings (OAH) for further proceedings.

A claimant who quits work is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for quitting when he did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause" generally 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 quit. OAR 471-030-0038(4) (August 3, 2011). However, OAR 471-030-0038(5)(a) provides that if an individual quits work to accept an offer of other work, good cause exists only if the offer is definite, the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances, the offered work is reasonably expected to continue, and the offered work pays an amount equal to or in excess of

the weekly benefit amount, or an amount greater than the work left. For purposes of OAR 471-030-0038(5)(a), “work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a). Quitting work for self-employment is without good cause. OAR 471-030-0038(5)(b)(G). Quitting work for self-employment includes quitting work to perform services as an independent contractor, as defined under ORS 670.600 and OAR 471-031-0181 (February 1, 2007). *See* ORS 657.040(1).

In decision # 150555, the Department found as fact that claimant quit work for self-employment, and therefore concluded that he quit work without good cause.¹ At hearing, claimant testified the he quit working for the employer to perform services as an independent contractor for another business entity. Audio Record at 13:30, 18:50. However, the ALJ did not conduct an inquiry into the facts necessary for consideration of whether claimant quit work to perform services as an independent contractor, as defined under ORS 670.600 and OAR 471-031-0181 (February 1, 2007). Nor, assuming that claimant quit working for the employer to work for the other business entity as an employee, did the ALJ conduct an inquiry into the facts necessary for consideration of whether the work was reasonably expected to continue, and paid an amount equal to or in excess of claimant’s weekly benefit amount, or an amount greater than claimant’s work for the employer.² Absent such an inquiries, we cannot determine whether claimant quit work for self-employment, and therefore without good cause under OAR 471-030-0038(5)(b)(G) , or, alternatively, whether he quit work with or without good cause under OAR 471-030-0038(5)(a).

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 or without good cause, Hearing Decision 14-UI-22821 is reversed, and this matter is remanded for development of the record.

DECISION: Hearing Decision 14-UI-22821 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: September 22, 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

¹ Decision # 150555 at 1.

² In Hearing Decision 14-UI-22821, the ALJ found as fact that claimant earned approximately \$800 per week performing services for the other business entity. However, claimant testified only that he had “anticipated” earning \$800 per week. Audio Record at 14:20. The ALJ did not ask claimant what he actually was paid.

“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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