

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1728

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On September 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 134618). Claimant filed a timely request for hearing. On October 23, 2014, ALJ Lohr conducted a hearing at which the employer did not appear, and on October 28, 2014 issued Hearing Decision 14-UI-27716, affirming the Department's decision. On November 3, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Hearing Decision 14-UI-27716 is reversed and this matter is remanded for further development of the record.

Claimant left work to move from her home in Warrenton, Oregon to Camas, Washington to provide assistance to her mother-in-law, father-in-law and father, who all live in Camas and are elderly. In Hearing Decision 14-UI-27716, the ALJ concluded that claimant did not show good cause for leaving work to care for any of these relatives under the general regulatory provision that states good cause for leaving work is such that a "reasonable and prudent person of normal sensitivity exercising ordinary common sense would leave work" and that the reason for leaving "must be of such gravity that the individual has no alternative to leaving work." OAR 471-030-0038(4) (August 3, 2011). The ALJ also concluded that claimant did not show that "compelling family reasons" caused her to leave work to provide assistance to her biological father under the special provisions of OAR 471-030-0038(5)(g), which provides that "leaving work for good cause includes \*\*\* leaving work for compelling family reasons." The ALJ finally concluded that providing care for either of claimant's parents-in-law could not constitute a "compelling family reason" for her to leave work under OAR 471-030-0038(5)(f) because the definition of "immediate family" as used in that rule "does not include an individual's in-laws." Hearing Decision 14-UI-27716 at 3; *see also* OAR 471-030-0038(1)(f). We disagree with the ALJ's restrictive interpretation and conclude that parents-in-law fall within the definition of "immediate family" for purposes of OAR 471-030-0038(1)(e)(B) and OAR 471-030-0038(1)(f).

OAR 471-030-0038(1)(f) states that "parents" and various other non-biological familial relationships are included within the definition "immediate family." Nowhere in its text does that provision of the rule

state that only the relationships it specifies can be considered as members of an individual's "immediate family." Nowhere does it restrict the term "parents" only to "natural or adoptive parents" and nowhere does it specifically exclude "step-parents" or "parents-in-law" from the status of "immediate family." It appears by making a broad generic to "parents" that the provision intended to define "parents" in the general sense that the term is commonly used, which would include claimant's parents-in-law. On remand, the ALJ should consider claimant's parents-in-law as members of claimant's "immediate family" for purposes of determining whether claimant has shown good cause for leaving work under OAR 471-030-0038(5)(g).

In applying OAR 471-030-0038(4) and OAR 471-030-0038(5)(g) to this case, further development of this record is needed to ensure an appropriate outcome. With respect to claimant's mother-in-law, although claimant testified that she was obese, confined to a wheelchair, had a heart condition, an aneurysm, diabetes, cellulitis, no bladder control, confused thought processes and could not meet her own basic needs, claimant also stated that until she and her husband moved to Camas, the mother-in-law lived alone without caregivers. Audio at ~7:38, ~8:10, 8:20. In light of this conflicting information, the ALJ should have inquired into how the mother-in-law met her own needs before claimant was able to move to Camas, the adequacy with which she did so, and any specific deficiencies in the mother-in-law's self-care and activities of daily life without claimant's assistance. The ALJ should also inquire into whether any professionals or other individuals had advised claimant that her mother-in-law was unable to continue providing care for herself and what they had told claimant. The ALJ should have further inquired into what specifically claimant thought might happen to jeopardize the mother-in-law's well-being if she was not able to provide assistance and the specific care and assistance that claimant expected to provide and actually did provide to the mother in law in Camas and the regularity with which she did so. Although claimant testified that her mother-in-law lived alone by choice and had previously refused to move to live with claimant and her husband, this circumstance is not necessarily dispositive of the mother-in-law's need for assistance nor of the objective gravity of claimant's reasons for moving despite the mother-in-law apparent objections. Audio at ~8:10, ~9:48.

With respect to claimant's father-in-law, we need additional information about his need for assistance since he is living in a memory care assisted living facility and already receiving care. While claimant testified that she intended to assist her father-in-law by taking him to doctor's appointments and out on errands, the ALJ should have inquired about how the father-in-law accomplished such activities before claimant moved to Camas, and whether the assisted living facility staff would not arrange for his transportation to medical appointments and perform routine errands for him. Audio at 8:40. As with the mother-in-law, the ALJ should inquire about the specific deficiencies in the father-in-law's care if claimant had not moved to provide assistance, and what, specifically, claimant was concerned would happen that would jeopardize the father-in-law's well-being if she did not move to Camas to provide care that assistance. The ALJ should also have inquired into the specific assistance that claimant expected to and did provide to her father-in-law after she moved to Camas and the regularity with which she did so.

With respect to claimant's father, who lived alone, claimant testified that he had kidney failure, received dialysis three times per week, had diabetes and sometimes took strong medications for a bad back. Audio at ~9:19. The ALJ should have inquired how the father kept his dialysis appointments, met his other medical needs and basic needs before claimant moved to Camas. As with the mother and father-in-law, the ALJ should have inquired about the specific deficiencies in her father's care if she did not

move to Camas, the specific assistance that claimant expected to and actually did provide to him after she moved to Camas, the regularity with which she did so and what she thought specifically might happen to her father to jeopardize his well-being if she had not moved. The ALJ should also have asked whether professionals or any other people had advised claimant that her father needed assistance and what they told her.

In considering whether claimant met the requirement of showing good cause to quit work to provide care for any of these relatives under OAR 471-030-0038(4) or OAR 471-030-0038(5)(g), the ALJ should have, but did not, develop the record about the alternatives to moving that claimant considered before quitting work, as well as the accommodations, if any, that claimant sought from the employer to enable her to provide care in Camas while remaining employed in Warrenton. Appropriate inquiries would include whether claimant told the employer of her need to provide care in Camas, when she did so, what she specifically discussed with the employer, the employer's response and if claimant rejected any of the employer's proposed options why she did so.. Further inquiries would include a description of the alternatives to moving that claimant considered, including whether it was or was not feasible for claimant to drive to two hours to Camas to provide the necessary care during her regularly regular times off from work, whether it was feasible for claimant to take time off from work to provide the care when necessary and, if claimant rejected those alternatives, why she did so. Absent these further inquiries, it cannot be determined whether claimant had good cause to leave work when she did.

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 had good cause to leave work, Hearing Decision 14-UI-27716 is reversed, and this matter remanded for further development of the record.

**DECISION:** Hearing Decision 14-UI-27716 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:** December 17, 2014

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 14-UI-27716 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.

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*NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros, (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en [court.oregon.gov](http://court.oregon.gov). En este sitio web, haga clic en “Help” para acceso a información en español.*

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