

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1946

Reversed & Remanded

PROCEDURAL HISTORY: On October 30, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work with good cause (decision # 80548). Claimant filed a timely request for hearing. On December 3, 2014, ALJ Lohr conducted a hearing, and on December 4, 2014 issued Hearing Decision 14-UI-29876, concluding that claimant quit work without good cause. On December 24, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 14-UI-29876 is reversed, and this matter remanded to the Office of Administrative Hearings (OAH) for another hearing.

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). Quitting work with good cause includes quitting due to compelling family reasons, including the need to accompany the individual's spouse to a place from which it is impractical for such individual to commute, due to a change in location of the spouse's employment. OAR 471-030-0038(5)(g) (August 3, 2011), OAR 471-030-0038(1)(e). 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 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 asserted that she quit work because of the need to accompany her husband to Gresham, Oregon, where her husband had accepted an offer of employment. Audio Record at 8:00. The employer asserted that claimant's husband had not accepted an offer of employment in Gresham, and that claimant quit work to seek work and housing in Portland, Oregon. Audio Record at 18:30. In Hearing Decision 14-UI-29876, the ALJ found the evidence as to whether claimant had accepted an offer of employment in Gresham equally balanced, and concluded that claimant therefore failed to establish

she quit work with good cause under OAR 471-030-0038(5)(g). The ALJ further concluded that to the extent claimant quit work to “seek work and housing in another locale,” she failed to establish good cause under OAR 471-030-0038(4). However, the record shows that although claimant planned to quit work on or about September 28, 2014 to seek work and housing in another locale, she quit work on September 9, 2014 because she was hospitalized due to complications with her pregnancy. Exhibit 1. The ALJ failed to conduct a full inquiry into the facts necessary for consideration of whether claimant had good cause to quit work for that reason, such as the nature of the complications with her pregnancy, her doctor’s specific statements regarding her return to work, the amount of time she anticipated needing off from work, whether a medical leave of absence from work was available, when claimant saw the doctor who later told her she could return to work, and when claimant was capable of returning to work. Absent such an inquiry we cannot determine whether claimant quit work 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, Hearing Decision 14-UI-29876 is reversed, and this matter is remanded for development of the record.

DECISION: Hearing Decision 14-UI-29876 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: February 5, 2015

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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