

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0004

Reversed & Remanded

PROCEDURAL HISTORY: On November 19, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 134212). Claimant filed a timely request for hearing. On December 22, 2014, ALJ Triana conducted a hearing, and on December 23, 2014 issued Hearing Decision 14-UI-30881, affirming the Department's decision. On January 6, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 14-UI-30881 is reversed, and this matter remanded to the Office of Administrative Hearings (OAH) for further development of the record.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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 his employer for an additional period of time.

In Hearing Decision 14-UI-30881, the ALJ found that claimant quit work because he was "dissatisfied with the working conditions," including the behavior of several of his coworkers, and an unexpected 1.5 hour increase in the length of claimant's unpaid commute to and from a new work site.¹ The ALJ concluded that to the extent claimant quit due to his coworkers' behavior, he quit work without good cause because either their behavior was not so egregious that no reasonable and prudent person would have continued to work with them, or claimant did not allow the employer a reasonable opportunity to

¹ Hearing Decision 14-UI-30881 at 1-2.

address their behavior.² The ALJ further concluded that to the extent claimant quit due to the length of his commute, he quit work without good cause because he “took the job knowing what the pay was and that he would be required to commute to the job site unpaid,” and [n]o evidence was presented that his costs of working exceeded his gross pay.”³

We agree with the ALJ that to the extent claimant quit work due to his coworkers’ behavior, he quit work without good cause. To the extent claimant quit due to the length of his unpaid commute, however, the ALJ’s analysis overlooks claimant’s undisputed testimony that the length of his unpaid daily commute increased from 6 to 7.5 hours. Audio Record at 12:30. 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. With respect to whether claimant’s cost of working for the employer exceeded his pay, claimant repeatedly complained about his low rate of pay and stated that he was raising his daughter on his own, raising the issue of whether he had to pay someone to care for his daughter while he was at work. Audio Record at 8:20, 17:20, 18:30. However, the ALJ did not ask claimant how much he was paid or whether there were any costs associated with his commute, or other costs of working for the employer. Nor did the ALJ ask how many days per week claimant commuted to work, how many hours he worked per day, how long the increase in the length of his commute was expected to continue, or how it impacted claimant, including his ability to care for his daughter.

Finally, the record shows that the employer required claimant to commute to and from the new job site with his coworkers in the employer’s vehicle. Audio Record at 12:30, 14:10. That testimony raised the issue of whether the employer’s failure to pay claimant for at least some of his commute time violated OAR 839-020-0045(3) (January 9, 2002), which states that where an employee is required to report at a meeting place to receive instructions or to perform other work there or to pick up and carry tools, the travel from the designated place to the work place is part of the day's work and must be counted as hours worked regardless of any contract, custom or practice. However, the ALJ failed to conduct a full inquiry into the facts necessary for consideration of that issue, which is relevant and material to whether claimant had good cause to quit work.

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 quit work due to the increase in the length of his commute, Hearing Decision 14-UI-30881 is reversed, and this matter remanded for development of the record.

DECISION: Hearing Decision 14-UI-30881 is set aside, and this matter remanded for further proceedings consistent with this order.

² *Id.* at 2-3.

³ *Id.* at 2.

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

DATE of Service: February 18, 2015

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 14-UI-30881 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.

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