

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0175**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On December 1, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 98745). On January 6, 2015 filed an untimely request for hearing. On January 29, 2015, ALJ Triana conducted a hearing at which the employer did not appear, and on January 30, 2015 issued Hearing Decision 15-UI-32689, allowing claimant's late request for hearing and affirming the Department's decision. On February 18, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Hearing Decision 15-UI-32689 is reversed and this matter is remanded for further development of the record.

In Hearing Decision 15-UI-32689, the ALJ found that claimant left work because the employer was going to assign two "problem employees" to the unit that claimant supervised. Hearing Decision 15-UI-32689 at 4. The ALJ concluded that claimant did not show good cause for leaving work because she did not show that grave reasons motivated that decision, reasoning that claimant showed only that dealing with those employees was "tiresome and hard" and that claimant presented no evidence that, among other things, the return of the two employees to her unit might result in any harm to her or other employees. Hearing Decision 115-UI-32689 at 4. However, several times during the hearing, claimant referred to one of those employees engaging in "physical" fights in the workplace, the "terrible" and "hostile environment" and "too dangerous" work situation that would result if both employees returned to her unit, and further stated that both employees had "threatened" her and that the presence of those employees in her unit would cause her to "fear for [her] life" and she "[couldn't] come to work and feel safe" and that she would "be afraid to come to work every day." Transcript at 20, 23, 24, 26, 30, 31.

A reasonable construction of the above-quoted statements was that claimant was asserting that she left work, at least in part, because she feared for her own safety or that of other employees that she supervised if the two employees returned to her unit. However, the ALJ failed to inquire into her statements sufficiently to enable us to determine if her stated concerns were objectively reasonable. The

ALJ should have, but did not, probe into the specific occurrences that formed the bases for claimant's concerns, such as describing the "physical" fights and whether anyone was hurt in them; concretely describing the behaviors of the two employees that led claimant to conclude that the work environment would become terrible, hostile or dangerous if the two employees returned to her unit and for whom it would become so; the specific behaviors and statements of the two employees that led claimant to conclude that they had threatened her or other employees; and concrete and specific examples of the two employees' past behaviors or statements that caused claimant to fear for her life and to conclude that she was not going to feel safe in the workplace if the two employees were assigned to her unit. In addition, the ALJ should inquire into why, if claimant had concerns for her safety or the safety of other employees, she "didn't have an issue" and did not quit when on separate occasions both of the employees briefly returned to her unit before being assigned elsewhere and then being reassigned to claimant's unit. Transcript at 34, 35. Absent such further inquiries, we cannot conclude whether or not claimant had good cause to leave 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 leave work, Hearing Decision 15-UI-32689 is reversed, and this matter remanded for further development of the record.

**DECISION:** Hearing Decision 15-UI-32689 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: April 6, 2015**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 15-UI-32689 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 Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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