

EO: 990
BYE: 201549

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

245
VQ 005.00
AAA 005.00
AAA 005.00

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0245

Hearing Decision 15-UI-34222 – Adopted
Hearing Decision 15-UI-34223 – Adopted
Hearing Decision 15-UI-34231 – Reversed and Remanded

PROCEDURAL HISTORY: On January 20, 2015, the Oregon Employment Department (the Department) served four notices of four administrative decisions concluding claimant voluntarily left work at Northwest Staffing Resources on October 2, 2014 (decision # 121045); voluntarily left work at Chuck's Seafood on October 13, 2014 (decision # 111801); did not actively seek work from December 14, 2014 through December 20, 2014 (decision # 123325); and did not actively seek work from December 21, 2014 through December 27, 2014 (decision # 123527). Claimant filed a timely request for hearing on all four decisions. On February 25, 2015, ALJ Clink conducted three hearings on decisions # 111801, 123325 and 123527. Claimant failed to appear at the hearing scheduled for decision # 121045, and, on February 26, 2015, ALJ Clink issued Hearing Decision 15-UI-24104, dismissing her request for hearing for failure to appear. On February 26, 2015, ALJ Clink also issued Hearing Decisions 15-UI-34222, 15-UI-34223 and 15-UI-34231, affirming the Department's decisions # 111801, 123325 and 123527. On March 6, 2015, claimant filed an application for review of Hearing Decisions 15-UI-34222, 15-UI-34223 and 15-UI-34231 with the Employment Appeals Board (EAB).¹

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-34222, 15-UI-34223 and 15-UI-34231. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2015-EAB-0243, 2015-EAB-0244 and 2015-EAB-0245).

EAB reviewed the entire hearing record in cases 2015-UI-28741 and 2015-UI-28743. On *de novo* review and pursuant to ORS 657.275(2), the hearing decisions under review are **adopted**.

¹ On March 6, 2015, claimant also filed a request to reopen in case number 2015-UI-28739. In accordance with OAR 471-041-0060(4), EAB referred claimant's request to the Office of Administrative Hearings for additional procedures.

CONCLUSIONS AND REASONS: Hearing Decision 15-UI-34231 should be reversed, and this matter remanded for additional information.

Claimant quit work because, after her daughter asked claimant and her mentally ill adult son, for whom claimant was sole caretaker, to leave her residence, claimant did not have any other family who would allow them to move in, did not have any other resources in the Coos Bay area where she had lived, and did not speak sufficient English to identify resources or find alternative living arrangements in Coos Bay. Claimant testified that she felt she had no choice but to move to California to an area where she could live with family and get by without speaking English.

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). “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 her employer for an additional period of time.

We have concluded in some cases that individuals who quit work to avoid homelessness, or when necessary to care for adult family members or grandchildren, have quit work with good cause. However, the record in this case was not developed sufficiently to determine whether such a conclusion was appropriate in this case. On remand, the record should be developed with information about claimant's living situation in the Coos Bay area and why she felt she had no alternative but to move to California. For example, the record shows that claimant did not immediately move to California after she quit work. The record fails to show what claimant did for lodging between the date she quit and the date she moved, or where she sought alternative lodging in the Coos Bay area, if at all.

To develop the record on remand about the care claimant had to provide her son, the ALJ should ask claimant questions about the nature of her son’s mental illness such as when the onset of his illness occurred, what his symptoms were around the time of claimant's work separation, whether he was capable of living without claimant's assistance, whether he held a job, whether he was receiving any medical care in Oregon, how frequently he required transportation to doctors' appointments before claimant quit work, whether claimant had lived in California before, whether she received assistance from her son in California when she moved or after moving, whether claimant continued to live with or provide care for her mentally ill son after moving to California, and any other follow up questions the ALJ develops during the hearing.

The record also fails to show whether claimant had to quit work to care for her son, or did anything to avoid quitting work. For example, the record was not developed with information about what kind of care and supervision claimant's son required around the time she quit, why providing that level of care was so intrusive on her work hours for Chuck's Seafood that she had to quit work to provide his care, or whether she had to take time off work to care for, supervise or transport her son because of his illness. Nor does the record show whether the employer ever refused claimant time off work to provide her son with care, supervision or transportation.

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 for quitting work, Hearing Decision 15-UI-34231 is reversed, and this matter is remanded for development of the record.

DECISION: Hearing Decisions 15-UI-34222 and 15-UI-34223 are affirmed. Hearing Decision 15-UI-34231 is set aside, and this matter remanded for further proceedings consistent with this order.

Decisiones de la Audiencia 15-UI-34222 and 15-UI-34223 queda confirmada. Decisión de la Audiencia 15-UI-34231 de la audiencia, y esta materia se remite para otros procedimientos constantes con esta orden.

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

DATE of Service: March 26, 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 Court of Appeals website at 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

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 courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.