

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0266

Reversed & Remanded

PROCEDURAL HISTORY: On December 22, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 93033). Claimant filed a timely request for hearing. On February 27, 2015, ALJ Shoemake conducted a hearing, and on March 6, 2015 issued Hearing Decision 15-UI-34654, affirming the Department's decision. On March 10, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

CONCLUSIONS AND REASONS: Hearing Decision 15-UI-34654 should be set aside, and this matter remanded.

Claimant testified during the hearing that she quit work, in part, because her wages were inadequate. Oregon's minimum wage at the time claimant quit her job was \$9.10 per hour.¹ Claimant testified that she earned \$380.00 for 69 hours of work per week, which calculates to \$5.50 per hour. She also testified that her flat rate pay for a 12 hour shift was \$80.00, which is \$6.66 per hour, and her flat rate pay for 24-hour day shifts was \$120.00, which is \$5.00 per hour.

Oregon law generally requires that workers receive minimum wage for all hours worked, and overtime when due. However, there are limited exceptions, including exceptions covering domestic service employees who provide companionship services in a family home for individuals who, because of age or infirmity, are unable to care for themselves, providing those services do not include providing trained

¹ We take notice of this generally cognizable fact, which can be found at http://www.oregon.gov/boli/TA/Pages/T_FAQ_Minimum-Wage.aspx. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

nursing services, and do not work more than 20% of their total weekly hours performing general household work. See ORS 653.020(14); OAR 839-020-0004(10).

An individual who quits work because she is paid less than minimum wage, or not paid overtime that is owed, on an ongoing basis, and who leaves work in whole or in part because she is being subjected to working conditions that violate Oregon wage and hour laws, may establish good cause for quitting work.² However, before we can make that determination, the record must be developed with evidence as to whether claimant's employment was subject to Oregon's minimum wage laws and rules or if her employment was the type of "companionship services" that are exempt. If claimant's employment was not exempt, the record must also be developed as to whether claimant brought her concerns about her wages to the employer, or whether a similarly situated reasonable and prudent person would have considered it unreasonable to do so.

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 had good cause for quitting work, Hearing Decision 15-UI-34654 is reversed, and this matter is remanded for development of the record.

DECISION: Hearing Decision 15-UI-34654 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: March 25, 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.

² 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. *Accord Marian Estates v. Employment Department*, 158 Or App 630, 976 P2d 71 (1999) (an individual who quit work because of a dispute over past wages, but is being lawfully paid at the time of the quit, has not shown good cause for quitting work); *J. Clancy Bedspreads and Draperies v. Wheeler*, 152 Or App 646, 954 P2d 1265 (1998) (an individual subjected to ongoing unlawful wage practices has shown good cause for quitting work).

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