

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0322**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On January 13, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 154407). The employer filed a timely request for hearing. On March 2, 2015, ALJ Kirkwood conducted a hearing and issued Hearing Decision 15-UI-34342, concluding claimant quit work without good cause. On March 20, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONING:** Hearing Decision 15-UI-34342 is reversed as unsupported by a complete record, and this matter remanded.

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). An individual who leaves work due to a reduction in hours has left work without good cause unless continuing to work substantially interferes with his return to full time work, or unless the cost of working exceeds the amount of remuneration received. OAR 471-030-0038(5)(e). Where the gravity of the situation experienced by the individual results from his or her own deliberate actions, to determine whether good cause exists, the actions of the individual in creating the grave situation must be examined in accordance with the provisions of OAR 471-030-0038(4).

The ALJ concluded claimant quit work without good cause, reasoning that because claimant earned more than it cost him to work in Bend, his “situation was not so grave that claimant had no reasonable alternative but to leave work. He could have continued to work for the employer while looking for work closer to Central Point.” Hearing Decision 15-UI-34342 at 3. However, the Oregon Court of Appeals has repeatedly held that it is immaterial to the good cause analysis whether an individual could have continued to work while seeking other employment. *See e.g., Warkentin v. Employment Dept.*, 245 Or App 128, 134-35, 261 P3d 72 (2011) (The conclusion that an individual could have continued to work

while seeking other employment “is as true in this case as it is in any other case, and is beside the point. The findings do not determine the issue before the board – whether a reasonable person would have quit work.”). The record fails to support a finding of whether or not a reasonable person would have quit work under the conditions present when claimant quit.

Reasonable alternatives to quitting work because one’s pay is insufficient to cover expenses might include exploring ways to reduce expenses. However, the ALJ did not ask whether claimant explored that option or considered it as an alternative to quitting work. The ALJ did not ask claimant whether he sought additional work from another employer to supplement his hours with the employer. Nor did the ALJ ask claimant what, if anything, he might have done to resolve his concerns short of quitting work. Finally, claimant has not been asked whether or why supporting two households was necessary, in other words, whether he considered moving his permanent residence and family to the Bend area a reasonable alternative to quitting work because of his finances, and, if not, why not. In the absence of that type of information, the record fails to show whether claimant had good cause to quit work when he did.

While the ALJ determined that claimant’s cost of working in Bend did not exceed his earnings based on reduced hours of work, the ALJ did not factor in any of claimant’s other costs of supporting himself or his family’s permanent residence in Central Point, including his monthly mortgage, homeowner’s and vehicle insurance, car maintenance, utilities, fuel costs, groceries, and any other expenses, or what other income his family had. The question is whether a reasonable and prudent person would quit working reduced hours for an employer, when the work was 176 miles from his permanent residence, required that he support two households, and paid only \$176 more per week than it cost to support one of those households (minus costs like vehicle insurance, renters insurance, homeowners insurance, etc.), even though his job paid more than his work expenses in Bend? Absent evidence about all of claimant’s expenses, the record lacks sufficient evidence to determine whether claimant’s reduction in hours constituted a circumstance of such gravity that a similarly situated reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to quit work under the circumstances.

Under the referenced administrative rules, an individual may also show good cause for quitting work with reduced hours if the individual can prove by a preponderance of the evidence that continuing to work for the employer would substantially interfere with his return to full time work. Claimant testified during the hearing that he had sought work in Central Point but not found work by the time he quit working for the employer. The ALJ did not ask claimant whether, or how, living and working reduced hours in Bend interfered with claimant’s return to full time work in either Bend or Central Point, nor did she inquire whether any such interference was substantial, or in what way claimant considered any such interference substantial.

Finally, the record also shows that claimant, whose permanent residence was in Central Point, sought and accepted work with the employer, a business established in Bend that primarily did business in the Bend area, located 176 miles away from his permanent residence, and, therefore, necessitated claimant setting up and supporting two households on whatever wages he earned from the employer’s admittedly weather-dependent, seasonal work. By seeking and accepting work under those conditions, claimant created the gravity of the situation that ultimately caused him to feel he had to quit the job. The administrative rules require that the actions of claimant in creating the grave situation be examined under OAR 471-030-0038(4). In other words, whether the circumstances that caused claimant to seek

and accept weather dependent work located 176 miles from his permanent residence knowing that he would have to support an additional household in order to maintain the employment relationship constituted a grave situation.

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-34342 is reversed, and this matter is remanded for development of the record.

**DECISION:** Hearing Decision 15-UI-34342 is set aside, and this matter remanded for further proceedings consistent with this order.

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 15-UI-34342 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.

**DATE of Service:** May 13, 2015

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

**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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