

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0400**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On February 5, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 153839). The employer filed a timely request for hearing. On March 23, 2015, ALJ Monroe conducted a hearing, and on March 27, 2015 issued Hearing Decision 15-UI-35910, concluding claimant voluntarily left work without good cause. On April 6, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Hearing Decision 15-UI-35910 is reversed, and this matter remanded to the Office of Administrative Hearings (OAH) for additional proceedings.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of 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). For an individual with a permanent or long-term “physical or mental impairment” (as defined at 29 CFR §1630.2(h)), good cause for voluntarily leaving work is such that a reasonable and prudent person with the characteristics and qualities of such individual, would have no reasonable alternative but to leave work.<sup>1</sup> Both standards are objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). A claimant who quits work must show

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<sup>1</sup> 29 C.F.R. §1630.2(h) defines “physical or mental impairment” as:

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

that no reasonable and prudent person would have continued to work for her employer for an additional period of time.

In Hearing Decision 15-UI-35910, the ALJ found that the employer approved claimant's request for a medical leave of absence from July 22, 2014 until November 11, 2014,<sup>2</sup> and that claimant obtained notes from her therapist and primary care physician requesting an extension to claimant's leave of absence because claimant was not yet able to return to work on November 11.<sup>3</sup> The ALJ found that the employer's back-up bookkeeper told claimant the notes were insufficient, and that claimant did not contact the employer's store director or human resources department before claimant determined she was unable to provide the documentation necessary to request an extension, and mistakenly assumed the employer discharged her on November 11, even though continuing work was available to claimant after November 11.<sup>4</sup> Applying the standard of a reasonable and prudent person with no permanent or long-term "physical or mental impairment," the ALJ concluded claimant quit work without good cause, because claimant's mistaken belief that she had been discharged did not create a situation of such gravity that she had no reasonable alternative but to leave work.<sup>5</sup> The ALJ asserted claimant had the reasonable alternative of contacting the employer's store director or the human resources department to confirm her assumption that she had been discharged by the employer on November 11.<sup>6</sup>

Although the ALJ found claimant was on a medical leave of absence for more than three months, and her therapist and primary care physician had given claimant notes confirming claimant was not able to return to work on November 11, 2014, the ALJ did not conduct an inquiry into whether claimant had a permanent or long-term physical impairment, as defined by 29 CFR §1630.2(h). The ALJ did not inquire into what symptoms claimant was experiencing, whether claimant had been diagnosed with a medical disorder, and how the symptoms affected claimant's daily activities and ability to function. Moreover, claimant testified that she learned from the employer in December 2014 that she was still employed, but was "afraid" to return to work or contact her store director, and did not contact the human resources department because a human resources representative had been "aggressive and threatening" to her in the past. Transcript at 19-24. The ALJ did not inquire whether claimant's concerns were related to a medical disorder or condition, and what claimant did, if anything, to address her concerns about returning to work or contacting her store director or human resources. Absent such inquiries, we cannot determine whether claimant had a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h), and, if so whether a reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for her employer for an additional period of time.

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

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<sup>2</sup> Hearing Decision 15-UI-35910 at 1.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.*

and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(4); *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 as to whether claimant quit work with good cause, Hearing Decision 15-UI-35910 is reversed, and this matter is remanded for further development of the record.

**DECISION:** Hearing Decision 15-UI-35910 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-35910 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.

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

**DATE of Service:** May 27, 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](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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