

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0806

Reversed & Remanded

PROCEDURAL HISTORY: On May 29, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 100640). Claimant filed a timely request for hearing. On June 22, 2015, ALJ Vincent conducted a hearing, and on June 26, 2015 issued Hearing Decision 15-UI-40796, affirming the Department's decision. On July 2, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 15-UI-40796 should be 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 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.

Claimant sustained several serious injuries, including a leg fracture, in a bicycle accident on May 1, 2015. Claimant quit work after the accident because she was unable to perform her job duties. The ALJ concluded that claimant quit work without good cause because, although claimant had valid concerns about her ability to return to work due to the nature of her injuries, claimant did ask the employer if it could preserve claimant's employment through personal leave, workplace accommodations, or transportation assistance.¹ The ALJ thus implicitly found that requesting leave, accommodations or

¹ Hearing Decision 15-UI-40796 at 2.

transportation assistance was a reasonable alternative to quitting work. The record shows the employer would have provided claimant with transportation assistance, showing there was a reasonable alternative to quitting had claimant's resignation been only due to a lack of transportation to work. However, the record does not show if it would have been a reasonable alternative, or futile, for claimant to request personal leave until she was able to return to work, or a workplace accommodation for work duties she was able to perform. Before claimant quit, her medical provider told her she would be unable to return to her work duties for six to eight weeks. The record shows the employer provided personal leave for only 30 to 45 days. The ALJ did not conduct a sufficient inquiry to determine the factors the employer would consider to approve personal leave or additional leave after 45 days. Nor did the ALJ conduct a sufficient inquiry to determine if the employer had positions open that were suitable for claimant, or that might be suitable for her during her recovery process. To make that determination, it is also necessary to know how long it would have been before claimant could return to work, and what her restrictions would have been throughout her recovery.

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 is disqualified from receiving benefits based on a work separation from the employer, Hearing Decision 15-UI-40796 is reversed, and this matter is remanded for development of the record.

DECISION: Hearing Decision 15-UI-40796 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and D. P. Hettle, *pro tempore*;
J. S. Cromwell, not participating.

DATE of Service: August 17, 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.

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