

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0839

Reversed & Remanded

PROCEDURAL HISTORY: On June 1, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision 85609). Claimant filed a timely request for hearing. On June 26, 2015, ALJ Murdock conducted a hearing, and on June 30, 2015 issued Hearing Decision 15-UI-40896, affirming the Department's decision. On July 9, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument in which he offered information not presented at the hearing and suggested that the ALJ was predisposed at hearing to rule against him on his claim for benefits. In light of our disposition of this matter, claimant may present the new information at the hearing on remand and EAB does consider whether claimant should be allowed to present that information directly to EAB under OAR 471-041-0090(2) (October 29, 2006). If claimant has concerns about the ALJ assigned to handle this matter on remand, he may discuss his concerns with the Office of Administrative Hearings.

CONCLUSIONS AND REASONS: Hearing Decision 15-UI-40896 is reversed and this matter is remanded for further development of the record.

In Hearing Decision 15-UI-40896, the ALJ concluded that claimant left work without good cause when he did so to accompany his domestic partner who was moving to a new city to attend graduate school, apparently because this circumstance did not fall constitute a "compelling family reason" which is defined under OAR 471-030-0038(5)(g) as good cause for leaving work. Hearing Decision 15-UI-40896 at 3. However, an individual who does not meet the criteria set forth in OAR 471-030-0038(5)(g) may still show good cause for leaving work under the general provisions of OAR 471-030-0038(4).

OAR 471-030-0038(1)(e)(C) defines what constitutes a "compelling family reason" for leaving work in the context of moving to accompany a spouse or domestic partner to a new location, and limits it to situations when the location of the spouse or domestic partner's employment has changed. While claimant testified at hearing that his domestic partner was moving both to attend graduate school and to take a paying position as a teaching assistant, and that she would not have decided to attend the

particular graduate school she selected unless she had this offer of employment, the ALJ did not follow up on this testimony to determine whether the teaching assistant job was employment within the meaning of OAR 471-030-0038(1)(C)(ii). Audio at ~7:30, ~4:40, ~7:46. The ALJ should have inquired as to the domestic partner's prior employment, her objective in attending graduate school and whether and how graduate school would further her career goals. The ALJ should also have inquired about the extent to which claimant and the domestic partner's household relied and will rely, after the move, on income earned by the domestic partner, the pay and benefits for the teaching assistant position, the hours of work for which the domestic partner will receive pay as a teaching assistant, whether the domestic partner will receive academic credit for working as a teaching assistant and whether the teaching assistant position will further the domestic partner's ultimate career aims. Further, the ALJ should have, but did not, inquire into specifically the extent to which the domestic partner's income from the teaching assistant position was intended to substitute for past financial contributions to her and claimant's household, and should have pursued evidence to support claimant's contention that the domestic partner would not have chosen to attend the graduate school that she did absent the offer of employment, such as, for example, the number and identities of schools that she rejected because employment was not offered or was inadequate. Absent this information, it cannot be determined whether OAR 471-030-0038(5)(g) applied to claimant's decision to leave work.

With respect to showing good cause under the more general provision of OAR 471-030-0038(4), the above inquiries are relevant as are inquiries into the length of claimant's relationship with the domestic partner, the extent to which their circumstances and finances are intermingled, whether the domestic partner could or would move to attend graduate school if claimant did not accompany her, whether claimant would experience serious disruption in his personal, financial or other circumstances if he was separated from the domestic partner during her schooling and the nature of that disruption, including whether claimant and his domestic partner could afford to maintain two households and whether he thought that his relationship with the domestic partner would be jeopardized. Further, it appears that claimant left work on April 24, 2015, well in advance of the start of the domestic partner's attendance at graduate school. Audio at ~6:26. To determine whether grave reasons required claimant to leave work at this time, the ALJ should also have, but did not, inquire about when claimant and the domestic partner actually moved to the new city, the reasons, if any, that it was important for them to arrive in the new city in advance of the school year, the reasons that it took from April 24, 2015 until they moved to the new city to ready claimant's house for sale and when they placed the house on the market and when it was sold.

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 to leave work under OAR 471-030-0038(5)(g) or OAR 471-030-0038(4), Hearing Decision 15-UI-40896 is reversed, and this matter remanded for further development of the record.

DECISION: Hearing Decision 15-UI-40896 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: August 31, 2015

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 15-UI-40896 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.

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.

.