

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0860**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On June 10, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 71214). Claimant filed a timely request for hearing. On July 7, 2015, ALJ M. Davis conducted a hearing, and on July 14, 2015 issued Hearing Decision 15-UI-41459, affirming the Department's decision. On July 16, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Hearing Decision 15-UI-41459 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.

The ALJ concluded that claimant quit work without good cause because, although claimant quit because she was the only person who could care for her father, "claimant could have applied to extend her leave of absence," implicitly finding that requesting an extension was a reasonable alternative to quitting work. Hearing Decision 15-UI-41459 at 3. At the time, however, claimant's father, who lived out of state and had refused to move with claimant to Oregon, had required some manner of care for approximately 10 years. The ALJ did not inquire into the nature of claimant's father's illness, the manner of care he required, her father's prognosis, or the duration of time claimant expected she would need to continue to make herself available to provide her father with care. Although the employer's

witness testified that claimant could have requested an additional leave of absence, the ALJ did not ask how long of a leave was available to claimant under the employer's policies, how long it would take the employer to process her leave request, or whether the leave of absence was paid or unpaid. Without an inquiry into those matters, the record fails to show whether requesting additional leave was reasonable.

Claimant had been working as a substitute teacher while on her leave of absence, indicating that she did not have to move out of state or change residences to provide her father with care. The record does not show whether claimant's work as a substitute teacher was with the employer or a different school or district. Although claimant notified the employer in March 2015 that she would not return for the 2015-2016 academic year, the record fails to show whether claimant notified the employer she would not return to the work she performed before she began her 2014-2015 leave of absence, or whether she notified the employer she would not return to any work for the employer. Since only individuals quitting "work" are subject to disqualification from benefits, and "work" means the continuing relationship between an employer and an employee regardless whether the ongoing work is in a particular position, if the relationship between the employer and claimant as a substitute teacher was ongoing, claimant might not be subject to disqualification from benefits based on a voluntary leaving. *See* OAR 471-030-0038(1).

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 quit work, and, if so, whether she had good cause for doing so, Hearing Decision 15-UI-41459 is reversed, and this matter is remanded for development of the record.

**DECISION:** Hearing Decision 15-UI-41459 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** July 21, 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.

**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.