

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1186**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On August 24, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 131734). Claimant filed a timely request for hearing. On September 22, 2015, ALJ McGorin conducted a hearing, and issued Hearing Decision 15-UI-44656, affirming the administrative decision. On October 3, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSION AND REASONS:** Hearing Decision 15-UI-44344 is reversed and this matter is remanded for further development of the record.

This matter comes before EAB to determine whether, on the facts developed at the hearing, claimant should be disqualified from receipt of unemployment benefits because she quit her job. 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). 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 his employer for an additional period of time.

In Hearing Decision 15-UI-44344, the ALJ found that claimant voluntarily left work on July 29, 2015 because she believed her supervisor and co-worker were harassing her, and she believed that the approach recommended by the employer’s human relations representative – to tell the individuals to stop the harassment – was ineffective. The ALJ determined that claimant did not demonstrate good cause for quitting because she failed to pursue the reasonable alternatives of “consulting again with Human Relations or asking to be assigned to another job.” Hearing Decision 15-UI-44344 at 2.

Under ORS 657.270, the ALJ is required to give all parties a reasonable opportunity for a fair hearing. Where, as here, a party is unrepresented, that obligation necessarily requires that the ALJ 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). The record in this case must be remanded because the ALJ did not develop a record that demonstrated a full and fair inquiry into the relevant facts.

The ALJ's conduct during the hearing impeded development of an adequate record. The ALJ repeatedly interrupted claimant, the only witness at the hearing, or talked over the claimant during her testimony. *See, e.g.*, Audio recording at 5:51; 6:30 and 8:35. As a result, claimant was unable to provide complete responses to the ALJ's questions and denied an opportunity to present relevant information.

Claimant testified that she was regularly sexually harassed by her supervisor, and physically harassed by a coworker. Audio recording at 4:55. Good cause for leaving work may exist if a claimant faces ongoing oppression or abuse in the workplace. *See, e.g., McPherson v. Employment Division*, 258 OR 541, 557, 591 P2d 1381 (1979) (a claimant is not required to "sacrifice all other than economic objectives and \*\*\* endure racial, ethnic or sexual slurs or personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits"). Because the ALJ asked virtually no questions about the nature, type, and frequency of harassment claimant testified that she experienced, we cannot determine whether claimant faced a situation so oppressive that it left her no reasonable alternative but to quit. On remand, the ALJ must ask claimant when the harassment started, who harassed her, what the harassment consisted of, how often it occurred, how often she had to work with the individuals who harassed her, and what she did to try to stop the harassment before she reported it to the employer's human relations representative on July 22, 2015. Claimant testified that she was harassed on July 23 and 24, 2015 – after she reported the harassment to the human relations representative on July 22 and before she quit her job on July 29. Audio recording at 6:30. The ALJ must therefore ask claimant to explain in detail what harassment occurred on those dates to determine what role these incidents played in her decision to quit her job.

Claimant testified that because one of the employees who abused her was the son of the employer's owner, she did not complain to the employer's owner about the harassment. Audio recording at 8:30 to 8:44. On remand, the ALJ must ask claimant what she believed would have happened had she talked to the employer about the harassment. In addition, the ALJ must ask about the type of environment in which claimant worked, *i.e.*, whether harassment of employees was commonplace or routine and accepted by managers; whether the employer had any policies or expectations regarding workplace behavior; and, if so, whether these policies were known to employees and enforced.

Claimant also testified when she spoke to the human relations representative on July 22, the representative told her to tell the harassers to stop their behavior; when claimant began to explain what else the representative told her, the ALJ cut her off. Audio recording at 5:44 to 5:51. On remand, the ALJ must ask claimant to explain completely what the human relations representative told her on July 22.

As discussed above, the ALJ concluded that claimant failed to pursue the reasonable alternative of asking for a different job. When asked at the hearing why she did not request a transfer, claimant testified that she had not thought it was an option. Audio recording at 7:48. On remand, the ALJ must

ask claimant why she did not think that transfer was an option; the ALJ must specifically inquire whether requesting a different job was possible or feasible, and whether any jobs were available that would not require claimant to work with employees who might harass her.

For the above reasons, we conclude that the ALJ failed to conduct a full and fair inquiry into the circumstances of claimant's work separation. We therefore remand this matter to the Office of Administrative Hearings for further development of the record.

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 15-UI-44344 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.

**DECISION:** Hearing Decision 15-UI-44656 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and J. S. Cromwell.

**DATE of Service: October 22, 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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