

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1220

Reversed & Remanded

PROCEDURAL HISTORY: On August 17, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 112108). Claimant filed a timely request for hearing. On October 6, 2015, ALJ Murdock conducted a hearing, and on October 8, 2015 issued Hearing Decision 15-UI-45593, affirming the Department's decision. On October 15, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 15-UI-45593 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.

In Hearing Decision 15-UI-45593, the ALJ concluded that claimant did not show good cause for quitting work because she was partially responsible for the conflicts she had with her coworkers and did not pursue alternatives to quitting work. Claimant argued to EAB that the ALJ erred in reaching that conclusion without first having called claimant's witness to testify. We agree.

Claimant testified that her coworkers, Devin in particular, bullied her, and that her repeated efforts for the employer to intervene failed until claimant was told that the employer was not going to do anything additional to resolve the issues between claimant and her coworker. Claimant testified that her eyewitness would corroborate her version of events and support her testimony. The employer's witness

testified, on the other hand, that claimant and Devin engaged in a mutual conflict, that Devin did not bully claimant, and that there was nothing the employer could have done to resolve the problems between claimant and Devin. The employer's witness also testified, in essence, that claimant's witness would corroborate the employer's version of events.

Despite the conflict between claimant and the employer's witness about every material issue in dispute, including which party's evidence claimant's witness would corroborate, the ALJ decided not to call claimant's witness, stating, "I don't think we'll need Ms. Kurtz's testimony. I think it's been covered by both of you." Transcript at 43. We disagree. The evidence in this matter was equally balanced. It was error to end the hearing without having at least attempted to call the available firsthand witness to testify, particularly where, as here, the parties were in dispute as to what the witness would say about events material to determining whether claimant had good cause for quitting work.

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 quit work when she did, Hearing Decision 15-UI-45593 is reversed, and this matter is remanded for development of the record.

DECISION: Hearing Decision 15-UI-45593 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-45593 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 J. S. Cromwell

DATE of Service: October 28, 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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