

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1330

Reversed & Remanded

PROCEDURAL HISTORY: On September 25, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 145709). Claimant filed a timely request for hearing. On October 22, 2015, ALJ Murdock conducted a hearing, and on October 27, 2015 issued Hearing Decision 15-UI-46594, affirming the Department's decision. On November 6, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

CONCLUSIONS AND REASONS: Hearing Decision 15-UI-46594 should be reversed, and this matter remanded for development of the record.

In Hearing Decision 15-UI-46594, the ALJ concluded that claimant voluntarily left work, reasoning, "the employer was willing to allow claimant to continue working in the position he held in Medford, Oregon," but that claimant chose to relocate to Salem with "only a tentative agreement with the employer to transfer him to the Salem store" and "did not assert or suggest that he was willing to continue working in his Medford position when the employer did not have a position for him in Salem."¹

Although we agree the record shows that claimant requested a transfer from Medford to Salem, and that, in the end, the Salem store did not have a position for claimant, the record fails to show that continuing work was available to claimant at the time of the work separation.² The record shows that claimant was

¹ Hearing Decision 15-UI-46594 at 3.

² If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If the employee is willing to continue to work for the same

told on September 4th that there was no work for him in Salem, but fails to show whether or not claimant was told he could continue working in Medford, or, if given that opportunity, he refused. The parties should be asked whether claimant had notified the employer he would not work for it unless the employer transferred him to Salem, if the employer offered claimant continuing work at any location other than Medford after the transfer failed, whether claimant and the employer's manager(s) had any conversations with claimant about his options after the failed transfer, or any other information about why claimant's failed attempt to transfer to Salem ended the employment relationship, and whose decision it was to end the relationship at that point. The ALJ should also ask claimant whether he would have been willing or able to move back to Medford to continue working for the employer after his failed attempt to transfer to Salem failed.

In Hearing Decision 15-UI-46594, the ALJ also concluded that claimant's voluntary leaving was without good cause.³ The ALJ reasoned that claimant's "desire[] to relocate to Salem, Oregon because his mother moved there, for her job, and because he had other extended family members there" was not a grave situation, and, to the extent the circumstances became grave once his transfer fell through, he created the gravity of his own situation.⁴

Assuming that the record developed on remand supports the conclusion that claimant voluntarily left work, the record fails to support the conclusion that claimant's circumstances were not grave. Although claimant testified that he moved to Salem because his mother moved to Salem, claimant was not asked, and the record fails to show, whether claimant, who had been residing with his mother in Medford, had the ability and financial resources to support himself living alone in Medford if his mother moved to Salem without him. The record fails to show whether there were any special circumstances involving claimant's or his mother's health, finances or other matters that necessitated that claimant continue to reside with his mother after she moved, even if doing so meant claimant would become unemployed. Without development of the record as to whether or to what extent claimant had the ability to choose to remain in Medford without his mother, in the absence of evidence that claimant had alternatives to moving with his mother from Medford to Salem, we cannot determine whether or not the circumstances under which claimant quit work were grave.

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 voluntarily left

employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

³ 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). 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.

⁴ Hearing Decision 15-UI-46594 at 3.

work, and, if so, whether he had good cause for doing so, Hearing Decision 15-UI-46594 is reversed, and this matter is remanded for development of the record.

DECISION: Hearing Decision 15-UI-46594 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and J. S. Cromwell

DATE of Service: November 24, 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.

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.