

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0111**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On November 19, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 122628). Claimant filed a timely request for hearing. On January 19, 2016, ALJ Shoemake conducted a hearing, and on January 25, 2016 issued Hearing Decision 16-UI-51604, affirming the Department's decision. On January 29, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

The employer submitted a written argument in which it sought to introduce information that was not presented at the hearing. The employer did not explain why it was not able to offer this information during the hearing or otherwise show as required by OAR 471-041-0090 (October 29, 2006) that factors or circumstances prevented it from doing so. For this reason, EAB did not consider the employer's new information when reaching this decision.

**CONCLUSIONS AND REASONS:** Hearing Decision 16-UI-51604 is reversed and this matter is remanded for further proceedings.

In Hearing Decision 16-UI-51604, the ALJ concluded claimant voluntarily left work without good cause because, while her commute to the workplace in Lowell, Oregon was 126 miles round trip and might constituted a grave reason to leave work, she created this gravity when she voluntarily moved from her residence in Lowell to Sweet Home, Oregon. Hearing Decision 16-UI-51604 at 2; OAR 471-030-0038(4) (August 3, 2011); OAR 471-030-0038(5)(f). However, the ALJ did not sufficiently explore the reasons motivating claimant's move from Lowell to Sweet Home to allow EAB to determine whether grave circumstances led to the move that significantly lengthened claimant's commute and increased its costs.

Although claimant testified that she moved to Sweet Home, in part, to place herself in the approximate geographic middle between her two sons' residences, one of whom was in Springfield, Oregon and the other in Lacombe, Oregon, the ALJ should have, but did not inquire into why claimant desired to live

equidistant from both sons, and whether those reasons were pressing. Audio at ~18:53. Claimant also testified she moved to Sweet Home, in part, because she and her boyfriend had located a nice and affordable house to rent in Sweet Home and they needed to move from their rental in Lowell because it was nearly uninhabitable. Audio at ~19:10. However, the ALJ should have, but did not, inquire into the reasons underlying claimant's decision to secure a new residence in Sweet Home, including whether she and her boyfriend looked at rentals in the vicinity of the workplace, whether there were any nice and affordable rentals near the workplace and, if so, the reason that they did not rent one of those residences more proximate to the workplace. Claimant also testified that problems she had with the commute from Sweet Home to the workplace and its expense, also motivated her to leave work. Audio at ~9:00; ~16:28. The ALJ should have, but did not inquire into whether, before claimant moved to Sweet Home, she considered the difficulty and expense of commuting to the workplace from Sweet Home, and how, if at all, claimant thought she would handle these factors. To enable a determination of the financial burden claimant experienced from commuting between her residence and the workplace three days each week, the ALJ should further inquire into the number of hours per week that claimant worked on average or the average weekly, bi-weekly or monthly income she received from the employer. Finally, the ALJ should inquire of claimant if there were any other factors that motivated her decision to move to Sweet Home other than her sons' locations and the Sweet Home rental house. Absent such inquiries, EAB cannot determine whether claimant had good cause to leave 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 leave work, Hearing Decision 16-UI-51604 is reversed, and this matter remanded for further development of the record.

**DECISION:** Hearing Decision 16-UI-51604 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** February 23, 2016

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-51604 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](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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