

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0115

Reversed & Remanded

PROCEDURAL HISTORY: On December 22, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 140541). Claimant filed a timely request for hearing. On January 14, 2016, ALJ S. Lee conducted a hearing, and on January 22, 2016 issued Hearing Decision 16-UI-51521, affirming the Department's decision. On January 30, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. Claimant submitted written argument with her application for review, but failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). EAB therefore did not consider the argument when reaching this decision.

CONCLUSIONS AND REASONS: Hearing Decision 16-UI-51521 is reversed, and this matter remanded to the Office of Administrative Hearings (OAH) for further proceedings.

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). Quitting work with good cause includes, but is not limited to, quitting due to "compelling family reasons," including the need to accompany the individual's domestic partner to a place from which it is impractical for such individual to commute due to a change in location of the domestic partner's employment. OAR 471-030-0038(1)(e) (August 3, 2011), OAR 471-030-0038(5)(g). Otherwise, "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). Where the gravity of the situation experienced by the individual results from his or her own deliberate actions, to determine whether good cause exists, the actions of the individual in creating the grave situation must be examined in accordance with the provisions of OAR 471-030-0038(4). OAR 471-030-0038(5)(f). The "good cause" 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 16-UI-51521, the ALJ found that claimant lived and worked for the employer in the Portland metropolitan area and quit work in June 2015 after moving, to Toledo, Washington, over 70 miles from Portland, in May 2015 to live with her “significant other” because her commute was too “long” and “difficult.”¹ The ALJ noted that claimant and her significant other began their relationship in “early” 2015, and that claimant had been “spending most of her time” in Toledo since March 2015, commuting from there to work and back on a daily basis.² The ALJ further noted that claimant’s significant other worked in “logging,” which was not performed in the Portland metropolitan area, and that he and claimant therefore agreed she should move to Toledo and quit her job.³

Based on the above findings, the ALJ concluded that claimant did not leave work due to compelling family reasons under OAR 471-030-0038(1)(e) because her significant other was not a domestic partner, there was no change in location of her significant other’s employment, claimant failed to establish that her relationship with her significant other would have been “jeopardized” if she did not move to Toledo, and her commute did not change when she finally moved there.⁴ The ALJ further concluded that claimant did not quit work with good cause under OAR 471-030-0038(4) because she maintained her own residence in Beaverton, Oregon before quitting work, and failed to show that not moving to Toledo would have created a grave financial situation for her.⁵

We agree with the ALJ that claimant did not quit work due to compelling family reasons under OAR 471-030-0038(1)(e) given that there was no change in location of her significant other’s employment. However, the ALJ failed to conduct a full inquiry into the facts necessary for consideration of whether claimant quit work for similarly compelling reasons that constitute good cause under OAR 471-030-0038(4) and (5)(f). For example, the ALJ did not a full inquiry into the facts necessary to determine whether claimant and her significant other were domestic partners, such as whether they intended to share assets and expenses; jointly purchased, built or maintained property; held joint accounts; or made substantial economic and noneconomic contributions to the household for mutual benefit. The ALJ did not ask claimant whether her relationship with her significant other would have been jeopardized if she did not move to Toledo. The ALJ did not conduct an inquiry into the facts necessary to determine whether claimant and her significant other had the reasonable alternative of finding housing between Portland and Toledo that shortened claimant’s commute while allowing her significant other to continue his work in logging. The ALJ did not ask claimant how much time it took her to commute from Toledo to work and back. The ALJ did not conduct an inquiry sufficient to determine whether claimant’s cost of working for the employer, including the cost of commuting from Toledo, exceeded the remuneration she received.

¹ Hearing Decision 16-UI-51521 at 1-2.

² *Id.* at 1.

³ *Id.* at 2.

⁴ *Id.* at 3.

⁵ *Id.* at 4.

Absent such inquiries we cannot determine whether claimant had no reasonable alternative but to move to Toledo, and no reasonable alternative but to quit work after doing so. We therefore cannot determine whether claimant quit work with good cause under OAR 471-030-0038(4) and (5)(f). 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 with good cause under OAR 471-030-0038(4) and (5)(f), Hearing Decision 16-UI-51521 is reversed, and this matter is remanded for development of the record.

DECISION: Hearing Decision 16-UI-51521 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 17, 2016

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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