

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0268**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On February 3, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 101035). Claimant filed a timely request for hearing. On March 1, ALJ Shoemake conducted a hearing, and on March 2, 2016 issued Hearing Decision 16-UI-54314, affirming the administrative decision. On March 8, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) United Parcel Service (UPS) employed claimant as an on call temporary package helper on December 7 and 8, 2015.

(2) On December 7, 2015, claimant reported to the employer's Coos Bay officer for an orientation. Claimant and four other new employees waited for the employee assigned to conduct the orientation, but the employee never arrived. Eventually, another employee told claimant and the other new employees to sign a form and go home. While she was waiting for the orientation, claimant talked with another employee and learned that her work as a temporary package helper would require that she drive her personal vehicle to meet UPS drivers in various locations outside of Coos Bay and throughout southern Oregon. Claimant discovered that she would be expected to travel at least 35 to 45 minutes to meet the drivers.

(3) Claimant, who lived in Coos Bay, was afraid to use her car for anything other than short trips. Her car was in poor condition, had recently been involved in an accident, and had been in a repair shop for two months. The tires on claimant's car were extremely worn, and she did not believe it would be safe to drive to the various locations outside of Coos Bay where she would be expected to meet UPS drivers.

(4) On December 8, 2015, claimant contacted a manager at UPS. She spoke with the manager about her concerns in regard to driving her own car outside of Coos Bay to meet drivers and asked if the drivers she would be assigned to assist could pick her up in Coos Bay. The manager responded that this was not possible. Claimant then told the manager she was unable to accept a position as a temporary package helper because she was looking for a full time, permanent position. Claimant did not tell the manager

the real reason she was voluntarily leaving her position, which was because she did not believe she could safely driver her car to the locations where she would be required to meet UPS drivers. Claimant hoped to be hired for a full time, permanent position at UPS and did not want to jeopardize her chances of obtaining a full time position by appearing to be unreliable.

(5) Claimant did not work as a temporary package helper at UPS after December 8, 2015.

**CONCLUSION AND REASONS:** Hearing Decision 16-UI-54314 is reversed, and this matter remanded for further proceedings.

In Hearing Decision 16-UI-54314, the ALJ found that claimant quit her job because the employer expected her to drive her personal vehicle to locations outside of Coos Bay to meet UPS drivers, and claimant believed it was unsafe to use her car, which was in poor condition, for these trips. The ALJ also found claimant's testimony that she talked to the employer about her concerns was not "persuasive," on the grounds that "it was not plausible that claimant would talk to the employer about her concerns and then tell the employer she had accepted a full time job with another employer in the same conversation." Hearing Decision 16-UI-54314 at 2. The ALJ then concluded:

Given that claimant lied to the employer, the more persuasive evidence is that claimant did not pursue the reasonable alternative of talking to the employer about her concerns to see if other arrangements could be made. *Id.*

We disagree. Claimant wanted to obtain a full time, permanent position at UPS. Claimant's belief – that her chances of obtaining a full time job would be prejudiced if she told that manager that the condition of her car prevented her from working as a package helper -- was entirely reasonable. Had she told the manager her actual reason for quitting, it could have indicated that she would not be a dependable candidate for a full time position. We find that claimant's explanation of what she told the manager about her reasons for quitting was plausible. We therefore reject the ALJ's conclusion that "the more persuasive evidence" demonstrated that claimant did not pursue the reasonable alternative of asking the employer if it could accommodate her situation.

The ALJ failed to conduct an inquiry sufficient to determine whether claimant had reasonable alternatives to voluntarily leaving work other than attempting to obtain some accommodation from UPS, however. On remand, the ALJ needs to ask for specific information regarding the condition of claimant's car on December 8, 2015: what damage the car had sustained in an accident, when and how long the car had been in the repair shop, and whether the car had any major mechanical problems that made it unsafe to drive. In addition, the ALJ must ask what would have been the cost of new tires for claimant's car, how much claimant anticipated earning as a temporary package helper, and whether she could have borrowed money, obtained the loan of a car from a friend or relative, or rented a car until she could afford to purchase new tires. Absent such inquiries, EAB cannot determine whether claimant had reasonable alternatives to leaving 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-54314 is reversed, and this matter remanded for further development of the record.

**DECISION:** Hearing Decision 16-UI-54314 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** April 4, 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](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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