

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0287**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On January 25, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 103443). The employer filed a timely request for hearing. On February 26, 2016, ALJ Vincent conducted a hearing, and on March 4, 2016 issued Hearing Decision 16-UI-54426, concluding claimant quit work without good cause. On March 14, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the employer's argument, but did not consider claimant's argument because he did not certify that he sent a copy of it to the employer as required under OAR 471-041-0080(2)(a) (October 29, 2006).

**CONCLUSIONS AND REASONS:** Hearing Decision 16-UI-54426 must be reversed and remanded for development of the record.

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) (August 3, 2011). Claimants are not, however, required to "sacrifice all other than economic objectives and \*\*\* endure \*\*\* personal abuse, for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits." *McPherson v. Employment Division*, 285 Or 541, 557 (1979). 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.

The ALJ found as fact that claimant decided to quit because he felt the employer's owner "mentally abused" him, but concluded that, notwithstanding that claimant felt harassed and upset with the employer, claimant's complaints "might provide a rational reason to discuss the conditions with the owner" but "would not be sufficient to cause a reasonable and prudent person of normal sensitivity,

exercising ordinary common sense, to have no reasonable alternative but to quit their job." Hearing Decision 16-UI-54426 at 2, 3. The record was not sufficiently developed to support the ALJ's conclusion.

Although claimant asserted at the hearing that the owner engaged in a pattern of mentally abusive behavior throughout his employment, as a context for claimant's inability to withstand further similar treatment on his final day of work, the ALJ did not make an inquiry into the alleged pattern of abuse, nor did the ALJ ask claimant why he felt the owner's behavior toward him on his final day of work presented him with such a grave situation that he had no reasonable alternative but to quit when he did. During the hearing on remand, the ALJ should ask claimant for more detail about the owner's alleged behavior on his final day of work, why claimant thought the behavior was mentally abusive, whether claimant told the owner that he thought the owner was being mentally abusive or asked him to stop, whether claimant told the owner that he would quit work if the owner did not change his behavior, and why claimant felt the owner's behavior was so egregious he had to quit over it. With respect to any prior instances of alleged abuse, the ALJ should ask claimant for details about what the owner said to him that claimant considered mentally abusive, when those instances occurred, how frequently, what it was about the owner's behavior that claimant thought was abusive, whether claimant complained to the owner or anyone else in a position of authority about the owner's behavior, how the instances made claimant feel and react, whether the instances had any effect on claimant's work, health or personal life, what if anything claimant did to alleviate those effects, why claimant felt the alleged mental abuse was so grave that he had to quit work, and whether, at the time claimant quit, thought he had any alternatives to quitting. In addition to allowing the employer's witness to respond to claimant's testimony, the ALJ should also ask the employer's witness whether the owner was mentally abusive to employees, whether claimant ever complained to the employer or anyone else in a position of authority that he felt the owner was mentally abusive, what the employer would have done had claimant made such a complaint, and what alternatives claimant had to quitting when he did.

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, Hearing Decision 16-UI-54426 is reversed, and this matter is remanded for development of the record.

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-54426 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.

**DECISION:** Hearing Decision 16-UI-54426 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** April 5, 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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