

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0302

Reversed & Remanded

PROCEDURAL HISTORY: On February 1, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 85943). Claimant filed a timely request for hearing. On February 24, 2016, ALJ Wipperman conducted a hearing, and on March 3, 2016 issued Hearing Decision 16-UI-54269, affirming the Department's decision. On March 18, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the parties' written arguments to the extent they were based on the record. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

CONCLUSIONS AND REASONS: Hearing Decision 16-UI-54269 should be reversed, and this matter remanded to the Office of Administrative Hearings (OAH) for additional information.

This matter comes before EAB to determine whether claimant voluntarily left work without good cause. 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). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 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.

Viewing claimant's description of his work environment from an objective standpoint, the ALJ concluded that claimant quit work without good cause. The ALJ reasoned that, although the disparity between claimant's and the retail manager's management styles "created substantial frustration and discomfort for claimant at work", claimant did not establish he left work because of an "abusive" or

“ongoing oppressive” work environment. Hearing Decision 16-UI-54269 at 3. However, the ALJ never asked claimant and the record does not show why continually being “undermined” and mistreated by the manager or why the owner’s refusal to do anything about it subjectively created such a grave situation for *claimant* – i.e., if it affected his work, home life, health and productivity, or created mental or emotional problems for him as a result of the tension described. Without that information, the record fails to show whether claimant’s circumstances at work presented him with such a grave situation that he had no reasonable alternative but to quit work 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-54269 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-54269 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-54269 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: April 19, 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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