

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0581

Reversed & Remanded

PROCEDURAL HISTORY: On April 11, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 80919). Claimant filed a timely request for hearing. On May 5, 2016, ALJ Messecar conducted a hearing at which the employer failed to appear, and on May 12, 2016 issued Hearing Decision 16-UI-59422, affirming the Department's decision. On May 17, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted argument written with her application for review. Because claimant 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 did not consider the argument when reaching this decision. We considered all other portions of the hearing record when reaching this decision.

CONCLUSIONS AND REASONS: Hearing Decision 16-UI-59422 is reversed, and this matter remanded to the Office of Administrative Hearings (OAH) for additional information.

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). "Good cause" generally 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). However, an individual who quits work to accept an offer of other work has quit work with good cause only if the offer is definite, and the new work is scheduled to begin in the shortest time reasonable under the circumstances, reasonably expected to continue, and pays an amount equal to or more than the weekly benefit amount. OAR 471-030-0038(5)(a). 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 her employer for an additional period of time.

In Hearing Decision 16-UI-59422, the ALJ concluded that claimant quit work without good cause effective February 26, 2016 to accept an offer of other work that began on March 7, 2016.¹ The ALJ reasoned that claimant's new job was not scheduled to begin in the shortest length of time reasonable under the circumstances because claimant left work with the employer 11 days before she would have started the other work.² The hearing record fails to support the ALJ's conclusions.

At hearing, claimant testified that the other work was to begin on March 8, 2016. Audio Record at 22:28 to 22:54. However, claimant also testified that she "went in [to the other work] one day and did a working interview," before she started work on March 8, 2016. Audio Record at 22:54 to 23:03. The ALJ must ask additional questions to determine the date of the "working interview" and if that work situation qualified as "employment" and thus was work with the new employer. To determine whether the work situation was "employment," the ALJ must ask claimant the duration of the "working interview," if she performed any services, the nature of the services, and, while not dispositive of the legal issue, whether the employer paid claimant for the services and if it had claimant complete new-hire paperwork during the "working interview." The ALJ must ask claimant if the employer required claimant to report to the "working interview," if and how the employer benefited from the "working interview," the purpose of it, and if claimant had to complete the "working interview" to be ready to begin her new work on March 8.

Moreover, the ALJ must ask additional questions about the circumstances of the work separation. Because claimant was not scheduled to return to work again for the employer until February 29, that would have left as many as eight days between her employment with the employer and the date she was scheduled to begin the other work on March 8, 2016. To determine whether the other work was to begin in the shortest time reasonable under the circumstances, the ALJ must ask claimant why she planned to wait as many as eight days between jobs, what she planned to do during that time period, why she believed it was necessary to complete those activities before beginning the other work, and why she did not continue working for the employer more days before beginning the other work.

Additionally, the record does not provide sufficient information to show if the new job was to pay an amount equal to or more than claimant's weekly benefit amount of \$248. The ALJ must ask claimant if the other work was full time work, or how many hours per of work per week were promised to claimant by the new employer.

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 is disqualified from receiving benefits based on her work separation from the employer, Hearing Decision 16-UI-59422 is reversed, and this matter is remanded for development of the record.

¹ Hearing Decision 16-UI-59422 at 2.

² *Id.*

DECISION: Hearing Decision 16-UI-59422 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: June 23, 2016

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-59422 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. 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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