

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0818

Reversed & Remanded

PROCEDURAL HISTORY: On May 19, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 110221). Claimant filed a timely request for hearing. On June 17, 2016, ALJ Vincent conducted a hearing, and on June 24, 2016, issued Hearing Decision 16-UI-62522, affirming the Department's decision. On July 8, 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.

CONCLUSION AND REASONS: Hearing Decision 16-UI-62522 should be reversed and this matter remanded to the Office of Administrative Hearings (OAH) for further development of the record.

This matter comes before EAB to determine whether, based on the facts developed at the hearing, claimant should be disqualified from receipt of unemployment benefits because she quit her job. A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) 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" 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 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for the employer for an additional period of time.

Claimant was the production director and an on-air personality for the employer, a radio station. At hearing, claimant essentially asserted that she quit work because she feared the program manager (Adams) based on his prior outbursts against her, and believed she might find herself in danger if she was alone with him while the owner, who had been the buffer between claimant and Adams, was away in Southern California for eight days. In Hearing Decision 16-UI-62522, the ALJ concluded claimant did not establish that her reason for quitting was sufficiently grave to cause a reasonable person to quit and regardless, she had reasonable alternatives to doing so such as asking for a leave of absence and making additional attempts to obtain intervention from the owner. Hearing Decision 16-UI-62522 at 3.

Good cause for leaving work may exist if a claimant faces ongoing oppression or abuse in the workplace. *See e.g. McPherson v. Employment Div.*, 285 Or 541, 557, 591 P2d 1381 (1979) (claimants are not required to endure slurs or personal abuse for fear that abandoning an oppressive situation will disqualify the worker from unemployment benefits). Generally speaking, the types of oppressive working conditions that are considered grave enough to amount to good cause for quitting work are those in which the claimant is, for example, subjected to ongoing unwanted sexual advances and touching despite complaints, ongoing sexual harassment, ongoing verbal abuse, sexist and ageist remarks, fits of temper, hostility and slurs based on gender or other protected classes, or assault. *See, accord Appeals Board Decision 13-AB-0502*, April 2, 2013; *Appeals Board Decision 12-AB-3213*, January 8, 2013; *Appeals Board Decision 12-AB-3173*, December 14, 2012; *Appeals Board Decision 11-AB-3647*, February 9, 2012; *Appeals Board Decision 11-AB-3308*, December 22, 2011; *Appeals Board Decision 11-AB-2864*, December 12, 2011; *Appeals Board Decision 11-AB-3063*, October 28, 2011; *Appeals Board Decision 11-AB-2272*, September 6, 2011.

Because the record does not contain sufficient details regarding the nature and basis of the fear claimant testified that she experienced, we cannot determine whether claimant's fear was reasonable and whether she faced a situation so oppressive that it left her no reasonable alternative but to quit when she did. On remand, the ALJ must ask claimant to describe Adams' physical demeanor during the July 26, 2013 incident, describe whether it was his words or demeanor that caused her to feel afraid of him, how often between that day and the day she quit did Adams verbally assault claimant, and how many complaints did she make to Wynn. The ALJ should also ask how many times did claimant and Adams work during the same hours and in the same building during that time span, whether she and Adams worked alone together, and how frequently, or whether there were always other people around them during those times. The ALJ should also ask how many times did claimant feel afraid to be in Adams' presence during the period in question and why did claimant feel like avoiding Adams while the owner was gone, or even trying to take time off work while the owner was gone were not feasible alternatives? The owner should be allowed to respond to claimant's testimony, and add information about the frequency with which claimant and Adams worked in the same building unsupervised. The ALJ should ask more questions of the owner about why he thought the poor relationship between claimant and Adams was mutual, whether Adams complained to him about claimant and generally speaking what the nature of the complaints was, and, once claimant describes more about the incidents with Adams, ask the owner why he thought that Adams was not threatening to claimant in the way claimant described. The ALJ should also give claimant the opportunity to respond to the owner's testimony and pursue any other line of inquiry he deems relevant.

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 we have concluded that the ALJ did not develop the record necessary for a determination of whether claimant quit work with good cause, Hearing Decision 16-UI-62522 is reversed, and this matter is remanded for development of the record.

DECISION: Hearing Decision 16-UI-62522 is set aside, and this matter remanded for further proceedings consistent with this order.¹

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

DATE of Service: August 11, 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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¹ **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-62522 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.