

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0849

Reversed & Remanded

PROCEDURAL HISTORY: On June 9, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 65133). Claimant filed a timely request for hearing. On July 1, 2016, ALJ Shoemake conducted a hearing, and on July 6, 2016 issued Hearing Decision 16-UI-63142, affirming the Department's decision. On July 19, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument to EAB, but 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). Consequently, EAB is constrained from considering claimant's written argument when reaching this decision. *See* ORS 657.275(2). We note, however, that because we have remanded this matter for further proceedings, claimant may present the information she offered to EAB during the hearing on remand, either through testimony or written materials. Copies of any written materials must be sent to the employer prior to the remand hearing, however, or the ALJ will likely exclude them from evidence. The parties should review the instructions for submitting written materials that will be included in the Notice of Hearing the Office of Administrative Hearings (OAH) will send scheduling the remand hearing, and contact OAH directly at the numbers provided in the Notice of Hearing if they have any questions about how to submit written materials for the ALJ's consideration.

CONCLUSIONS AND REASONS: Hearing Decision 16-UI-63142 should be reversed, and this matter remanded.

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" 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 her employer for an additional period of time.

In Hearing Decision 16-UI-63142, the ALJ concluded that claimant quit work to relocate to California to "make a complete life change," but, while her decision was understandable, claimant did not show that her situation at the time she quit work was so grave as to leave her no reasonable alternatives but to quit work, and, therefore, claimant did not show she had good cause to quit work. We disagree with the ALJ that the record, as developed thus far, supports that conclusion.

It appears based on claimant's testimony that she quit work for purely personal reasons, and not because of her working conditions or other job-related factors. An individual who quits work for personal reasons may show good cause for quitting work if the personal situation is one of such gravity that a reasonable and prudent person experiencing that situation would conclude she had no reasonable alternative but to quit work in order to address or resolve the personal situation. We agree with the ALJ's findings of fact concerning claimant's divorce, struggle to meet her mortgage expenses, decision to sell the house, and decision to move to California. However, claimant also testified during the hearing that she was constantly struggling during the period before she moved and she alluded to difficulties her ex-husband had caused her. The ALJ did not follow up on those matters to ask claimant whether her struggle and ex-husband were factors she considered when deciding to quit work to move out of state, and, if they were, to explain what the struggles were and why she considered them so grave that she felt she had to quit work and move when she did.

On remand, the ALJ should ask claimant whether the struggles and ex-husband problems she alluded to were factors in her decision to quit work. If claimant indicates they were, the ALJ should ask claimant to explain in detail what her struggles were, and what difficulties her ex-husband caused her, and when those events occurred in relation to her decision to quit work. The ALJ should ask claimant what effect those matters caused on her mental state, health, and whether and how that affected her decision to quit work. The ALJ should ask claimant what alternatives she explored to quitting that might have allowed her to continue working for the employer for an additional period, and, to the extent claimant identifies any alternatives, the ALJ should ask why claimant concluded that she needed to quit work instead of pursuing them. The ALJ should also allow the employer the opportunity to provide evidence and respond to claimant's testimony.

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 did not develop the record necessary for a determination of whether claimant quit work with good cause, Hearing Decision 16-UI-63142 is reversed, and this matter is remanded for development of the record.

DECISION: Hearing Decision 16-UI-63142 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: July 26, 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-63142 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.