

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0940

Reversed & Remanded

PROCEDURAL HISTORY: On July 11, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 73614). Claimant filed a timely request for hearing. On August 2, 2016, ALJ Shoemake conducted a hearing in which the employer did not participate, and on August 8, 2016, issued Hearing Decision 16-UI-65186, affirming the administrative decision. On August 15, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review, claimant submitted a March 23, 2016 letter from a physician which stated that claimant “was seen on 3/23/16 with complaints of depression and anxiety after childbirth,”¹ and described physical and psychological problems from which claimant suffered after the birth of twin children on November 1, 2015. The information contained in this letter is new and was not presented at the hearing. Under OAR 471-041-0090, EAB may consider information not offered into evidence at the hearing if the party presenting the information demonstrates that circumstances beyond the party’s reasonable control prevented the party from offering the information at the hearing.

In EAB Exhibit 1, the physician explained that claimant suffered numerous medical complications during and after the birth of her children, and that while she was recovering from her children’s birth, the “sleep deprivation of early parenthood combined with severe pre-eclampsia and superimposed anxiety and depression made a perfect storm for a lapse in judgment.” We conclude that more likely than not, claimant failed to offer the March 23 doctor’s letter into evidence at the hearing due to a “lapse in judgment” caused by her physical and psychological conditions. Because claimant’s health problems constituted circumstances beyond her reasonable control, claimant demonstrated good cause for failing to offer the March 23 physician’s letter at the hearing. Further inquiry by the ALJ is necessary to determine the relevance and materiality of the March 23 letter on claimant’s decision to voluntarily leave work. In addition, due process of law requires that the employer be given an opportunity to

¹ The physician’s March 23, 2016 letter is marked as EAB Exhibit 1. A copy of EAB Exhibit 1 is included with this decision. Any party that objects to the admission of EAB Exhibit 1 must submit its objections to this office in writing, setting forth the basis of the objection, within ten days of the date on which this decision is mailed. Unless such an objection is received, EAB Exhibit 1 will remain part of the record.

respond to the new information, if it chooses to do so. Hearing Decision 16-UI-65186 is therefore reversed, and this matter remanded pursuant to ORS 657.275(1) for a new hearing and hearing decision based upon the record of the proceeding before the ALJ.

On remand, the ALJ must inquire whether the depression and anxiety or “severe pre-eclampsia” with which claimant was diagnosed constitutes a permanent or long-term “physical or mental impairment” as defined by 29 CFR § 1630.2(h). If the ALJ finds that one or more of these conditions is a permanent or long-term “physical or mental impairment,” the ALJ must then determine whether a reasonable and prudent person with that type of impairment would have continued to work for the employer for an additional period time as required by OAR 471-030-0038(4) (August 4, 2011). Whether the ALJ finds that claimant’s conditions were long-term or only temporary, the ALJ must inquire whether the conditions with which claimant was diagnosed on March 23, 2016 adversely affected her ability to effectively perform her job duties or otherwise played a role in her decision to quit work on May 25, 2016. We note that in EAB Exhibit 1, the physician stated that because of her health issues, claimant “should be off work starting form [sic] 1/26/16 and then depending on her recovery she may be ready to return to work full time.” The ALJ must inquire what treatment, if any, claimant sought, for her health conditions, what was the prognosis or expected outcome of this treatment, if known, and whether a physician had made any determination concerning her readiness to return to work after March 23.

DECISION: Hearing Decision 16-UI-65186 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: September 9, 2016

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-51604 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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