

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0966**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On July 15, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 150502). Claimant filed a timely request for hearing. On August 2, 2016, ALJ Menegat conducted a hearing, and on August 8, 2016, issued Hearing Decision 16-UI-65184, affirming the administrative decision. On August 18, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record. Claimant's argument also included names and contact information for witnesses who had information relevant to the reasons for his work separation, but were unavailable for the August 2 hearing; claimant indicated that these witnesses were willing to be contacted. Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information only if the party providing the information demonstrates that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. Claimant provided no reason why he was unable to present the information he now wants EAB to consider at the August 2 hearing, and did not explain why he did not ask the ALJ for a continuance to present testimony of the witnesses who were unavailable on August 2. Claimant's request to present new evidence is therefore denied. Because we are reversing Hearing Decision 16-UI-65184 and remanding this matter for further development of the record, however, claimant will have the opportunity to offer additional evidence and witness testimony at the hearing on remand.

**CONCLUSION AND REASONS:** Hearing Decision 16-UI-65184 is reversed, and this matter remanded for further development of the record.

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 P3d 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.

In Hearing Decision 16-UI-65184, the ALJ concluded that claimant failed to demonstrate good cause for leaving work. The ALJ found that “claimant left work because he felt that he was not being fairly compensated for the services he was performing and because he was concerned about personal liability because of the employer’s financial condition.” Hearing Decision 16-UI-65184 at 2. The ALJ concluded that claimant’s circumstances did not constitute a grave situation that left him no alternative but to quit his job because “the company owner was providing necessary financial support when requested and it appeared it would continue to do so and it appeared that claimant was willing to continue to work in his position if the employer would raise his salary by 20%.” *Id.* at 3. The ALJ also concluded that claimant had the reasonable alternatives of continuing “to try and negotiate his duties so that they could be accomplished within a regular work schedule while he did seek and obtain other work to go to before leaving work with the employer.” *Id.* However, the record does not contain sufficient details regarding the reasons why claimant believed that the employer was financially unstable, we cannot determine whether claimant’s belief was reasonable and whether he faced a situation so grave that it left him no alternative but to quit when he did.

At the hearing, claimant testified that the employer had “zero financial stability,” had made no business plan, and was accruing debt that it could not repay. Audio recording at 11:23, 11:40, 17:39. On remand, the ALJ must ask claimant what information he had regarding the company’s financial status, why he believed the employer had insufficient operating income, upon what he based his conclusion that the company was accruing debt it could not repay, and why he believed he might become personally liable for the employer’s debts. Claimant also testified that the employer was unable to pay him a portion of a bonus that he had earned under a compensation plan in effect for the preceding year. Audio recording at 13:37. The ALJ must ask what were the terms of claimant’s compensation plan, what conditions the plan specified he needed to fulfill to receive the bonus, and whether claimant had fulfilled these conditions. The ALJ must then ask when the employer denied claimant his bonus, how much of the bonus claimant was denied, what reasons were given for the denial, and whether the employer told claimant he would be able to earn or receive the unpaid portion of his bonus at some later date.

Claimant testified that as a result of employee resignations, he was assigned many additional duties, and that he called the manager of the private equity firm that owned the employer and asked that either his salary be increased by 20% or that he be allowed to work part time so he could look for another job. Audio recording 11:01. According to claimant the manager denied his request, and subjected him to “verbal abuse” during a telephone call. Audio recording 11:23. The ALJ must ask what extra duties claimant was assigned, when he was assigned these duties, whether he attempted to negotiate the assignment of these duties with the private equity firm manager and if not why not, and why claimant believed a 20% salary increase was appropriate. In addition, the ALJ must inquire when claimant spoke to the private equity firm manager, what the manager told him, and why he believed the manager subjected him to “verbal abuse.”

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-65184 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 15, 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](http://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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