

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1089

Reversed & Remanded

PROCEDURAL HISTORY: On August 9, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 105442). Claimant filed a timely request for hearing. On September 1, 2016, ALJ M. Davis conducted a hearing, and on September 2, 2016 issued Hearing Decision 16-UI-66866, affirming the Department's decision. On September 20, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 16-UI-66866 is reversed, and this matter remanded to the Office of Administrative Hearings (OAH) for further proceedings consistent with this order.

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 generally defined 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. OAR 471-030-0038(5)(a) states that if an individual leaves work to accept an offer of other work, good cause only exists if the offer is definite, the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances, is reasonably expected to continue, and pays an amount equal to or in excess of the weekly benefit amount or an amount greater than the work left.

In Hearing Decision 16-UI-66866, the ALJ found that claimant quit work to accept an offer of other work, and concluded that claimant quit work without good cause under OAR 471-030-0038(5)(a)

because the offered work was temporary and not expected to continue for more than about one month. The ALJ did not address whether claimant had good cause to quit work under OAR 471-030-0038(4).¹

We agree with the ALJ that claimant quit work, in part, to accept an offer of work, and that he did not have good cause to quit work under OAR 471-030-0038(5)(a) due to the temporary nature of the offered work. At hearing, however, when the ALJ first asked claimant why he quit, claimant, who worked for the employer as a delivery driver for only three weeks,² testified that he quit because his job duties were more strenuous than the employer had led him to believe when hired, and the employer was not paying him on time due to financial difficulties. Audio Record at 6:35-7:20. When the ALJ asked claimant whether he would have quit without the offer of other work, claimant testified that he would have, because he was not making any money, and his work was far harder than the employer had led him to believe. Audio Record at 7:30-7:45. Claimant also complained that the employer reduced his hours without notice based on the daily needs of the employer's main customer. Audio Record at 10:25-11:00.

Thus, although the ALJ ultimately led claimant into conceding that he would not have quit on the day he did without the offer of other work,³ the record shows claimant would not have quit if not for the allegedly strenuous nature of his job duties, the employer's alleged failure to pay claimant on time due to financial difficulties, and the alleged reduction in hours without advance notice. However, the ALJ failed to conduct an inquiry into the facts necessary for consideration of whether claimant had good cause to quit work for those reasons. 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 had good cause to quit working for the employer, Hearing Decision 16-UI-66866 is reversed, and this matter remanded for development of the record.

On remand, the ALJ should conduct a full inquiry into the allegedly strenuous nature of claimant's job duties, including his ability to perform those duties and the effect of doing so on his physical and mental health, and any alternatives he had to quitting work for that reason, such as a change or reduction in duties or, if necessary, a medical leave of absence. The ALJ also should conduct a full inquiry into the employer's alleged failure to pay claimant on time due to financial difficulties, including whether the employer was violating ORS 652.120 and was likely to continue doing so, and whether claimant made any attempts to resolve the situation.⁴ The ALJ also should conduct an inquiry into claimant's alleged

¹ Hearing Decision 16-UI-66866 at 1-2.

² *Id.* at 1.

³ Audio Record at 14:50-15:10.

⁴ ORS 652.120 provides, relevant part, that every employer shall establish and maintain a regular payday, at which date the employer shall pay all employees the wages due and owing to them. When an employer has notice that an employee has not been paid the full amount the employee is owed on a regular payday and there is no dispute between the employer and the employee regarding the amount of the unpaid wages, if the unpaid amount is less than five percent of the employee's gross wages due on the regular payday, the employer shall pay the employee the unpaid amount no later than the next regular payday. If the unpaid amount is five percent or more of the employee's gross wages due on the regular payday, the employer

reduction in hours sufficient to determine whether claimant had good cause to quit work under OAR 471-030-0038(5)(e),⁵ the effects on claimant of the alleged reductions in hours being decided on a daily basis, and any attempts claimant made to mitigate those effects. Finally, the ALJ should conduct a full inquiry into any other facts necessary for consideration of whether, based on the totality of circumstances, claimant had good cause quit work under OAR 471-030-0038(4).

DECISION: Hearing Decision 16-UI-66866 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: October 13, 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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shall pay the employee the unpaid amount within three days after the employer has notice of the unpaid amount, excluding Saturdays, Sundays and holidays.

⁵ OAR 471-030-0038(5)(e) states that if an individual leaves work due to a reduction in hours, the individual has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received.