

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1185**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On August 19, 2016 the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 123313). The employer filed a timely request for hearing. On October 4, 2016, ALJ Vincent conducted a hearing, and on October 7, 2015 issued Hearing Decision 16-UI-68827, reversing the Department's decision and concluding that claimant voluntarily left work without good cause. On October 24, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Green Sports Alliance, Inc. employed claimant as the membership director from October 1, 2011 until June 30, 2016.

(2) In approximately February 2016, the employer changed its management structure and claimant was required to begin reporting to the executive director. Claimant disliked the management style of the executive director. Claimant thought that the executive director's management style was "aggressive," his behaviors were "erratic" and his communications were "agitated." Exhibit 1 at 4. Claimant thought that working with the executive director was "incredibly challenging" and reporting to him was "intolerable." Exhibit 1 at 4.

(3) On May 22, 2016, claimant sent an email to the chairman of the employer's Board of Directors titled "Current State of Affairs." Exhibit 1 at 4. The email began by stating "I write to you and the rest of the Board with honesty, candor and a heavy heart." *Id.* The email then laid out the difficulties claimant experienced in dealing with the executive director and some of his complaints about the executive director and the working conditions. The email further stated:

[A]fter five years with the [employer], I've had enough. I would like to work with you on a smooth, peaceful, and productive transition process out of my role as Membership Director. \*\*\* I don't want to leave the organization high and dry, and my

first priority is to ensure that all of my roles and responsibilities are well accounted for, so our members continue to be well taken care of. I am willing to stay on through the Summit [a conference occurring on June 30, 2016] or even shortly thereafter as we are severely [at] overcapacity already, and also to provide or ample time for the hiring and training of new employees, to make the transition as smooth as possible.

\*\*\*\* It breaks my heart to reach this point. \*\*\*\* However, I cannot continue doing [working] in my current role in this organization as it currently exists. I greatly appreciate your consideration and support, and I look forward to working with you soon on a post five-year severance package and a departure plan [that is] respectful of everyone concerned.

Exhibit 1 at 6.

(4) On May 24, 2016, the executive director, the Board's vice-chairperson and another employer representative met with claimant to address claimant's May 22, 2016 email. The executive director told claimant that the Board had accepted his resignation and that his last day at work would be June 30, 2016. Audio at ~13:45; Exhibit 3 at 1. The executive director told claimant that a separation agreement would be presented to him shortly and discussed other matters related to winding up claimant's employment. Claimant told the employer he would work in any capacity until June 30, 2016.

(5) On June 30, 2016, claimant voluntarily left work.

**CONCLUSIONS AND REASONS:** Although claimant voluntarily left work on June 30, 2016, this matter is reversed and remanded for further proceedings to determine whether claimant had good cause for leaving work.

**The Nature of the Work Separation.** Despite its language, claimant contended that he did not intend the May 22, 2016 email he submitted to the employer to be notice of his resignation and it should not be construed as such. Audio at ~19:54. OAR 471-030-0038(2) (August 3, 2011) sets out the standard for determining the nature of a work separation. If claimant could have continued to work for the employer for an additional period of time, the work separation was a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If claimant was willing to continue to work for the employer for an additional period of time but was not allowed to do so by the employer, the separation was a discharge. OAR 471-030-0038(2)(b).

Claimant stated that his intention in sending the May 22, 2016 email was to "start a conversation" about the "gravity" of his concerns and to inform the employer that he intended to resign "if and only if [his] concerns were not addressed." Audio at ~20:08, ~21:46. However, claimant's explanation about the message he intended to convey by the email is contrary to what it actually said and how the employer should reasonably have construed it. While claimant did not state in the email that "I quit" or "I resign," the emotional tone of the email is regret at leaving, and its plain language and content makes sense only in the context of claimant's departure. In addition, the letter discusses in detail the steps necessary to facilitate a work separation, such as hiring a new employee and refers to a "severance package" and a "departure plan. Exhibit 1 at 6. There is nothing conditional or contingent in the language of the email, such as an ultimatum to the employer that, if not followed, would trigger claimant's departure. While claimant contended that his failure to state the date that he planned to leave work in the email

necessarily suggests that he did not intend to resign, that is not so. Audio at ~23:03. First, claimant stated in the email that he was willing to remain at work until “the Summit,” an event scheduled to take place on June 30, 2016 and which was reasonably construed as being the date he selected for of his final day. Second, the Court of Appeals has held that when a claimant did not supply a date certain in his resignation but offered to stay as long as needed or until a replacement was located, and the employer refused the offer and effectuated the separation immediately, the separation remained a voluntary leaving because by his offer, claimant delegated to the employer the discretion to choose the separation date. *Westrope v. Employment Department*, 144 Or App 163, 925 P2d 587 (1996). Because the language of the May 22, 2015 email was not reasonably construed as anything other than an announcement to the employer that claimant was quitting, claimant’s work separation was a voluntary leaving. Either because the Summit was on June 30, 2016 or because claimant delegated the determination of his final day to the employer, the date he voluntarily left work was June 30, 2016.

**Good Cause for Leaving Work.** 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 2016-EAB-68827, the ALJ concluded claimant did not show good cause for leaving work since he did not present any testimony at hearing on why he might have quit work and the most that “can be inferred [was] that it had something to do with his work environment as set forth in the May 22, 2016 letter.” Hearing Decision 2016-EAB-68826 at 3. However, claimant’s testimony at hearing and the May 22, 2016 letter presented a clear predicate for claimant’s decision to leave work, and the ALJ should have followed up and developed the evidence on those facts before concluding that claimant did not show good cause for leaving work.

The ALJ should have inquired about claimant’s complaints about the executive director as set out in the May 22, 2016 email, including that the executive director had an “aggressive management style,” engaged in “erratic behavior” and “agitated communications” and that claimant found working with him “intolerable.” Exhibit 1 at 4; Audio at ~20:08, . Specifically, the ALJ should conduct an inquiry to determine if claimant decided to leave work due to these perceived characteristics of the executive director, any other characteristics, or any other reasons, whether or not they were related to the executive director. Further the ALJ should develop the evidence sufficient to determine whether any of the reasons or concerns cited by claimant were grave, including specific examples of incidents underlying or exemplifying those concerns, when they started, their dates and all harms or adverse consequences to claimant that arose from those incidents. At hearing, claimant mentioned that he had spoken to his former supervisor and several members of the Board of Directors about “deep concerns” he had with “the organization and my place in it” and the ALJ should ask claimant to identify those concerns, and follow up with an inquiry similar to that discussed above to determine the reasonable gravity of those concerns. Audio at ~20:35. As well, the ALJ should ask claimant the identities and the positions of the former supervisor and the Board members with whom he spoke, when he spoke to each of them, what he

told each of them, what he wanted them to do, what actions they took in response to resolve claimant's issues, what actions, if any, were undertaken by other employer representatives in reaction to the actions undertaken on claimant's behalf and any follow up efforts claimant made to resolve his concerns. The ALJ should, as well, determine if claimant tried in any other ways to resolve his concerns other than speaking to the former supervisor and the Board members and, as appropriate, follow up on claimant's efforts in the same manner as above to determine if claimant exhausted all reasonable alternatives before he decided to quit. Claimant also mentioned at hearing that the employer did not have an "established HR policy," an "employee handbook" or a "code of conduct." Audio at ~20:40. The ALJ should determine what claimant meant by this statement and how, if at all, the lack of these employer resources might have contributed to his decision to leave work when he did. Finally, the ALJ should more fully explore claimant's thought process in determining that no options were available to him other than quitting work and, if applicable, why claimant thought pursuing further options was futile

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 leave work when he did, Hearing Decision 16-UI-68827 is reversed, and this matter remanded for further development of the record.

**DECISION:** Hearing Decision 16-UI-68827 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** November 4, 2016

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision [#] 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](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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.