

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0226**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On October 14, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 74917). Claimant filed a timely request for hearing. On January 28, 2017, ALJ Murdock conducted a hearing, and on February 6, 2017, issued Hearing Decision 17-UI-76301, affirming the administrative decision. On February 21, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant and based on evidence in the record.

**FINDINGS OF FACT:** (1) From July 20, 2015 until July 27, 2016, Vectrus Systems employed claimant as a network security information assurance engineer 2.

(2) During the first week of claimant's work for the employer, the employer told him that it was hiring an associate who would assist claimant in his work. During the second week of his work for the employer, claimant was notified that the person who had initially accepted the associate position had decided not to take the job. The employer made no further attempts to hire anyone to assist claimant in performing his work. Because he had no one to assist him, claimant performed the work of two people, working more than 40 hours per week. Claimant, who was a salaried employee, never reported to the employer that he worked more than 40 hours per week.

(3) Claimant has been diagnosed with multiple cancers. In approximately April 2016, he found that the symptoms of his cancers were returning due to the stress he was experiencing because of his heavy workload. In addition, probably because cancer had compromised his immune system, claimant was diagnosed with an upper respiratory infection. Claimant's doctor recommended, and the employer granted, a medical leave of absence from May 2 through June 1, 2016.

(4) While on leave, claimant felt much better. Claimant's doctor told him there was a "connection" between claimant's job and his health; the doctor told claimant that it was claimant's decision to make, but that he recommended that claimant find another job. Audio recording at 11:28.

(5) Claimant's medical leave of absence was extended until July 25, 2016. On that date, the doctor released claimant to return to work without restrictions. Also on that date, claimant spoke with a representative from the employer's human relations (HR) department who told claimant that he was expected either to return to work on July 26, 2016, or to provide a doctor's note to authorize additional time off for medical reasons. Claimant told the HR representative that because he did not want to return to work for the employer in the position he held prior to the date he went on leave, he was quitting his job. He told the HR representative that he was interested in working for the employer in a different position, and the HR representative put him in touch with a recruiter, who began assisting claimant in looking for other positions with the employer.

**CONCLUSION AND REASONS:** Hearing Decision 17-UI-76301 is reversed, and this matter remanded to the Office of Administrative Hearings (OAH) for additional proceedings.

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). Claimant had multiple cancers, permanent or long-term "physical or mental impairments" as defined at 29 CFR §1630.2(h). A claimant with those impairments who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for his employer for an additional period of time.

The ALJ concluded that claimant failed to demonstrate good cause for voluntarily leaving his job for the employer because, although his stressful work environment exacerbated his cancer symptoms, "[a]reasonable and prudent person with the characteristics and qualities of an individual with cancer would first pursue reasonable accommodations or medical restrictions to his job." Hearing Decision 17-UI-67301 at 3. However, the ALJ failed to conduct an inquiry sufficient to determine what reasonable accommodations were available to claimant, and what medical restrictions existed that prevented him from continuing to work for the employer.

Claimant testified that his long work hours and the "intense" environment of his job caused him stress which exacerbated the symptoms of his cancers. Audio recording at 13:59 and 19:13. On remand, the ALJ must ask claimant what factors, if any other than his long work hours, created an "intense" environment on the job and created stress for him. When asked by the ALJ why he did not ask the employer for reduced work hours to accommodate his medical condition, claimant testified that he did not think it would have reduced his stress and "it [the reduction in hours] was not going to happen." Audio recording at 25:34. The ALJ must ask claimant why he believed the employer was unwilling to consider or approve a reduction in his work hours, and why he believed any such reduction would not have alleviated his stress. Claimant also testified that it never occurred to him to talk to the employer

about his stressful work situation, and he thought just to “get away from the job.” Audio recording at 26:21. On remand, the ALJ should ask why claimant did not think to talk to the employer about improving his work environment.

In regard to claimant’s medical restrictions, the employer’s HR representative testified that claimant’s doctor released him to work without restrictions on July 25, 2016. The ALJ failed to ask claimant about this release, however. On remand, the ALJ must ask claimant if and when he had an appointment with the doctor to discuss the release, what was discussed with the doctor regarding the release, whether he agreed with the doctor’s assessment that he was able to work without restrictions, and if he did not agree he was able to return to work, why he did not talk with his doctor about his concerns or ask the doctor to impose restrictions that might address his concerns.

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 for quitting work, Hearing Decision 17-UI-67301 is reversed, and this matter is remanded for development of the record.

**DECISION:** Hearing Decision 17-UI-76301 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** March 15, 2017

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-76301 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.

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