

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0624**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On April 7, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 101341). Claimant filed a timely request for hearing. On May 8, 2017, ALJ Snyder conducted a hearing, and on May 12, 2017, issued Hearing Decision 17-UI-83316, affirming the administrative decision. On May 18, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other party as required by OAR 471-041-0090(2)(a) (October 29, 2006). We therefore did not consider this argument in reaching this decision.

**EVIDENTIARY MATTER:** At the hearing, claimant attempted to offer into evidence documents that she stated she had submitted to the Office of Administrative Hearings (OAH) and the employer. The ALJ did not admit these documents into evidence because they were not in the record available to her on the date of the hearing. The documents were apparently received by OAH after the hearing and are now in the hearing record.<sup>1</sup> Included with the materials claimant submitted to OAH is a letter in which claimant states that she mailed copies of the documents to the employer. We have marked claimant's submission to OAH as Exhibit 1. Because we are reversing Hearing Decision 17-UI-83316 and remanding the matter for further development of the record, claimant will have an opportunity to offer Exhibit 1 into evidence at the hearing on remand.

**CONCLUSION AND REASONS:** This matter is remanded to OAH to further develop the record.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she 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

<sup>1</sup> The postmark on the envelope in which claimant mailed the documents to OAH is illegible.

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 her employer for an additional period of time.

At the hearing, claimant testified that she quit her job as health services director for the employer, a memory care community, because she believed that her license as a registered nurse would be jeopardized if she continued to work for the employer, due to the employer's failure to comply with applicable law and regulations. The ALJ found, however, that "[t]he employer testified and indicated that Claimant would not be held responsible for any incidents that took place at the facility, rather the Executive Director would be held responsible." Hearing Decision 17-UI-83316 at 2. The ALJ concluded that "[it] is understandable that Claimant may have felt that she could no longer continue her employment in a facility that she felt was poorly managed and operated, however good cause for the purpose of qualifying for unemployment insurance benefits requires something more." *Id.* The ALJ failed to develop a record sufficient to determine whether claimant's work environment created a grave situation for her, however.

Claimant cited the following reasons why she believed the employer did not provide care to residents that complied with the law: (1) the employer's refusal to implement an appropriate service plan for a resident who was prone to falling; (2) the employer's failure to properly utilize "supportive devices that have restraining qualities," such as bed alarms; and (3) the employer's inadequate supervision of employees, which apparently resulted in numerous reported "incidents" involving residents. In regard to a resident who repeatedly fell, claimant testified that she proposed a service plan that would require a staff person to accompany the resident whenever he left the dining room and assist the resident to his room. Audio recording at 7:07. Claimant's supervisor, the executive director of the memory care facility where claimant worked, testified that claimant's plan was not "reasonable" or "doable" because the resident was ambulatory, and staff members would not always be able to see when he left the dining room. On remand, the ALJ must inquire why claimant's supervisor or another staff member did not help claimant develop a more "reasonable" or "doable" service plan to prevent the resident from falling.

In regard to the employer's failure to utilize "supportive devices that have restraining qualities," claimant testified that in response to a complaint, a representative from a government agency conducted an investigation and discovered that the employer was not properly utilizing these devices. Audio recording at 8:49. The ALJ failed to question claimant's supervisor about this investigation. On remand, the ALJ must ask claimant's supervisor when this investigation occurred, what agency was responsible for conducting the investigation, what were the results of the investigation, and whether the employer changed any policies or procedures as a result of the investigation. Regarding the "incidents" involving residents, claimant testified that she was required to investigate 3-5 "incidents" a day. On remand, the ALJ must ask claimant what were the "incidents" she was required to investigate, what she believed to be the causes of these "incidents," and whether she believed the employer had not adequately addressed the causes of these "incidents." The ALJ must also ask claimant's supervisor to respond to claimant's testimony about these "incidents," and, in particular, ask the supervisor if she believes that 3-5 "incidents" a day is excessive.

In regard to the testimony of claimant's supervisor regarding who would be found responsible for any instance of abuse in the employer's facility, we note that OAR 411-054-0105(6)(b) (July 2, 1010) provides that the if an allegation of abuse is substantiated by the appropriate division of the Department of Human Services, the division "may determine that the facility, an individual, or both the facility and an individual are responsible for the abuse. In determining responsibility, the Division shall consider intent, knowledge and ability to control, and adherence to professional standards as applicable." On remand, the ALJ must ask the supervisor why, given this rule, the supervisor believed that claimant could not be found responsible for any substantiated allegations of 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 the ALJ failed to develop the record necessary to determine the nature of claimant's work separation, Hearing Decision 17-UI-83316 is reversed, and this matter remanded for development of the record.

**DECISION:** Hearing Decision 17-UI-83316 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:** June 12, 2017

**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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