

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0677**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On April 13, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 120017). Claimant filed a timely request for hearing. On May 16, 2017, ALJ Shoemake conducted a hearing, and on May 25, 2017 issued Hearing Decision 17-UI-84210, affirming the Department's decision. On June 6, 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 parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We therefore considered only information received into evidence at the hearing when reaching this decision. See ORS 657.275(2). If claimant would like the documents she submitted as written argument admitted into evidence, then she must provide a copy of them to the employer and the Office of Administrative Hearings (OAH) prior to the remand hearing; she is otherwise free to testify about their contents at the remand hearing to the extent they are relevant and material to the issue at hand.

**CONCLUSIONS AND REASONS:** Hearing Decision 17-UI-84210 is reversed and this matter remanded for additional evidence.

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 sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (August 3, 2011). An individual who leaves work to accept an offer of other work has left with good cause, providing the offer was definite, paid the same or more than either the individual's pay from the work left or the weekly benefit amount, and is to begin in the shortest length

of time reasonable under the circumstances. OAR 471-030-0038(5)(a). The “good cause” 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.

The ALJ concluded that claimant quit her job with the employer to accept work with a different employer, but did not have good cause for doing so based on findings that the new job was only a 10-15 hour a week position and started almost a month after she quit her job with the employer. Hearing Decision 17-UI-84210 at 2. The record does not support the ALJ’s conclusions, however, and additional information is necessary before we can reach a decision in this case.

To the extent the record on remand supports the conclusion that the proximate cause of claimant’s decision to quit work was that she had a new job, the ALJ should inquire further about how many hours claimant was promised at her new job. If, for example, claimant was promised a “minimum” of 10 hours a week, at a rate of \$24 per hour she would exceed her earnings from work with the employer, suggesting she might have had sufficient earnings to meet that part of the definition of good cause. On remand, the ALJ should ask claimant about her hours – not how many hours she worked the first week of her new job, or how many hours she worked on average once she started her new job, but how many hours she was told she would work at the new job during the relevant time period, which is the time at which she quit her job with the employer. To the extent claimant left work almost a month prior to the beginning of her new job, the record is unclear as to the date of claimant’s actual last day of work with the employer. The record is also not developed sufficiently with the reasons for the delay between the end of her job with the employer and the beginning of her new job. Those reasons must be fully explained on the record to establish whether that delay was reasonable under the circumstances.

Additionally, however, the existing record does not clearly establish that the proximate cause of claimant’s decision to quit was having a new job. Notably, claimant testified that, despite having the new job, and not being financially able to quit her job with the employer without having a new job to go to, she did not plan to quit work when she went to work for her March 5<sup>th</sup> shift. She testified that she only quit on that day because she was “treated unfairly” and there was an incident that day that made her feel as though she was being discriminated against. Audio recording at ~ 11:00; ~ 11:40. Therefore, aside from claimant’s new job beginning at the end of the month, the ALJ must develop the record about the incident and unfair treatment that caused claimant to leave work on March 5<sup>th</sup>. The ALJ must ask claimant to fully explain the unfair treatment generally, and the March 5<sup>th</sup> incident specifically. The ALJ must ask claimant why she felt the unfair treatment and incident were so grave that she had to quit when she did. The ALJ must ask whether claimant thought she could have done anything short of quitting, such as requesting a transfer, complaining to management or human resources, or taking other action that would allow her to resolve her concerns while maintaining her employment. The ALJ should ask whether or not claimant accepted her new job with the intent of quitting her job with the employer. If claimant was not planning to quit, or did not plan to quit until after her new job started, the ALJ should ask claimant what made her decide to quit when she did, and why she felt she could not delay quitting her job with the employer until her new job began.

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 or not claimant quit work with good cause, Hearing Decision 17-UI-84210 is reversed, and this matter is remanded for development of the record.

**DECISION:** Hearing Decision 17-UI-84210 is set aside, and this matter remanded for further proceedings consistent with this order.<sup>1</sup>

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

**DATE of Service: June 30, 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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<sup>1</sup> **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-84210 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.