

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0681

Reversed & Remanded

PROCEDURAL HISTORY: On April 28, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 92200). The employer filed a timely request for hearing. On May 25, 2017, ALJ Monroe conducted a hearing, and on June 2, 2017 issued Hearing Decision 17-UI-84850, affirming the Department's decision. On June 6, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 17-UI-84850 must be reversed and this matter remanded for development of the record.

As a preliminary matter, we take notice of certain contents on the Oregon Teacher Standards and Practices Commission (TSPC) website, as indicated herein.¹ The seven common varieties of teaching licenses listed on the TSPC website include the following two:

Reciprocal Teaching License: Issued to educators who have completed an educator preparation program and hold an active, valid and non-provisional teaching license from another state. A Reciprocal Teaching License is valid for one year and is non-renewable. Prior to the expiration of the Reciprocal Teaching License, the license holder must apply for and meet the requirements for a Preliminary or Professional teaching license. To meet the requirements for a Preliminary or Professional teaching license, the individual must qualify for an Oregon endorsement by receiving a passing score on an Oregon-approved subject matter test, unless the individual qualifies for reciprocity or waiver of subject matter tests as provided in OAR 584-220-015.

¹ We take notice of the generally cognizable facts set forth herein, which are publicly available at the Oregon Teacher Standards and Practices Commission (TSPC) website: <http://www.oregon.gov/TSPC/Pages/index.aspx>. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3). Unless such objection is received and sustained, the noticed facts will remain in the record.

Substitute Teaching License: Issued to educators who have completed a teacher preparation program but do not hold a regular Oregon Teaching license. A Substitute Teaching License is valid for three years. To qualify for a Substitute Teaching License, the individual must, among other things, hold a Bachelor's degree; have a valid, active and non-provisional license from another state; or have completed an Oregon teacher preparation program that resulted in eligibility for a non-provisional Oregon teaching license.

Finally, we take notice that the Oregon TSPC website states that it generally takes 12 to 14 weeks to process applications for licenses, providing the applications are complete upon submission.²

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). Where the gravity of the situation experienced by the individual results from her own deliberate actions, however, to determine whether good cause exists, the actions of the individual in creating the grave situation must be examined in accordance with the provisions of OAR 471-030-0038(4). OAR 471-030-0038(5)(f).³ 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.

The ALJ concluded that claimant quit work with good cause because, upon the expiration of the "provisional" teaching license required to keep her job after March 24th, she no longer qualified for the job. Hearing Decision 17-UI-84850 at 3. The ALJ reasoned that claimant made considerable efforts to pass the exam required for her to keep the required licensure and could not afford other options like graduate school, and, with regard to obtaining a different teaching license, that neither claimant nor the employer "was able to provide any testimony establishing whether claimant would have had to pass the same assessment or otherwise meet criteria necessary to obtain the substitute license." *Id.* We agree with the ALJ that claimant voluntarily left work. However we require additional evidence to determine whether claimant quit work with or without good cause.

As found by the ALJ, claimant quit work because the Oregon teaching license she held was expiring, and she did not have the ability to pass a test she thought necessary to obtain another teaching license, Teaching License, and she did not have or did not research the requirements for a teaching license that might not require her to pass a test. (Although the ALJ described claimant's teaching license as a "provisional license," it appears that claimant actually held an Oregon Reciprocal Teaching License, since she testified that she had a lifetime New Jersey teaching license. Audio recording at 9:42). Under

² See <http://www.oregon.gov/tspc/Pages/index.aspx>

³ We note that OAR 471-030-0038(5)(c) defines good cause to exclude individuals who quit their jobs due to the willful or wantonly negligent failure to "maintain a license..."; that provision is inapplicable to claimant's circumstances because the record demonstrates she unsuccessfully made a significant effort to maintain her license. Her failure to maintain her license was, therefore, not willful or wantonly negligent.

those circumstances, however, the gravity of the situation experienced by claimant resulted from her own deliberate actions, that is, when she was unable to obtain a Preliminary or Professional teaching license after her Reciprocal Teaching License expired claimant deliberately chose not to take action to either attempt to obtain a Substitute Teaching License or non-licensed work with the employer. Because the gravity of claimant's situation results from her own deliberate actions, her actions in creating the grave situation must be analyzed under OAR 471-030-0038(4) to determine whether she had "good cause" for creating it. In other words, whether a reasonable and prudent person, exercising ordinary common sense, would have had reasonable alternatives to creating a grave situation that necessitated voluntarily leaving work as claimant did.

The crux of that determination, in our view, rests upon whether claimant's loss of license, without pursuing any license to replace it and without exploring transfers to non-licensed positions with the employer, was reasonable under the circumstances. Additional evidence is necessary to reach such a determination. As developed in the record thus far, we know that school districts generally expect professional teachers to be entirely responsible for their own licensure, and do not get involved in licensure issues except when requested to provide documentation or verification. Claimant in this matter seemed to share that understanding and worked alone to try to obtain her teaching license. However, it also appears that claimant was ill-informed about the requirements for obtaining a license and what her options were if she was unable to do so, which seems unusual for a professional teacher in claimant's position. For example, claimant apparently held a Reciprocal Teaching License, which was valid for one year and which required that she obtain a Preliminary or Professional Teaching license when the Reciprocal license expired. To obtain a Preliminary or Professional Teaching License, the individual must pass a subject matter test unless the individual qualifies for reciprocity or a waiver. On remand, the ALJ must ask claimant whether she investigated the requirements for the Preliminary or Professional Teaching License, and whether she determined if she qualified for reciprocity or a waiver. Additionally, although claimant professed that she was unaware of it, information about and application materials for the Substitute Teaching License are prominently listed on the TSPC website. On remand, the ALJ should question the parties about those materials and, in particular, ask claimant to explain why she did not pursue such a license if it was within her ability to do so.

On remand, the ALJ should also ask claimant at what point during her efforts to pass the mastery test she realized she would be unable to pass it, and how long before her Reciprocal Teaching License expired did that realization occur. Claimant had to have known, as an experienced teacher in Oregon and elsewhere, that there were many types of teaching licenses, and a professionally licensed individual would reasonably research the license requirements in a state to which she moved. The ALJ should ask claimant what, if any, effort she made to explore her options as far as obtaining a different kind of teaching license, such as going to the TSPC website or contacting the TSPC to request the information. The ALJ should develop the record about what efforts claimant made, and why she did, or did not, make such efforts. Information about a Substitute Teaching License was readily available on the TSPC's public website, and the information indicates that claimant could qualify for such a license if she had a valid teaching license from another state.⁴ The ALJ should ask claimant whether she possessed the minimum qualifications necessary to obtain the Substitute Teaching License, as listed at the TSPC

⁴ We note that the District employed claimant as a "deployable substitute teacher" (Hearing Decision 17-UI-84850, Finding of Fact 1) and the District witness testified that claimant would have been able to retain her job if she had a Substitute Teaching License.

website and copied into this decision. The ALJ should ask claimant whether, within the 12-14 weeks prior to quitting her job in which she might have applied for a Substitute Teaching License, and given her financial situation, she would have been able to come up with the money to pay the \$140 application fee and a \$55 or \$57 fee for the background check and fingerprinting.

Claimant suggested that methods to qualify for a Preliminary or Professional Teaching License – other than passing the mastery test – were foreclosed to her because of her financial situation. The ALJ should also ask the parties whether claimant’s employer or any collective bargaining unit under which she worked might have provided tuition reimbursement options if claimant took courses related to her licensing or qualifications to work as a teacher in Oregon, and whether claimant explored such an option.

When it appeared to claimant at some point that her efforts to obtain a Preliminary or Professional Teaching License had failed, and she would not be able to obtain a Preliminary or Professional Teaching License and continue in her current position, it does not appear on this record that claimant made efforts to obtain work with the employer that did not require licensure. As an experienced teacher out of state and in Oregon claimant had to have been aware, as a matter of common sense, that schools typically employ a great deal of unlicensed employees, such as teacher’s aides, secretaries, assistants, etc. The ALJ should ask the employer what kinds of non-licensed jobs it had around the time that claimant quit work, whether any of the jobs were available, and whether claimant would have qualified for a transfer into one of those positions had she asked to do so. The ALJ should ask claimant whether she inquired about any such job openings, and ask both parties whether or not claimant would have had to quit her job as a teacher in order to apply for work as a non-licensed employee. The ALJ should ask claimant whether she considered exploring continued employment as a non-licensed employee reasonable, and, depending on her response, why or why not. Finally, the ALJ should ask any follow up questions necessary to determine whether claimant had good cause for creating the gravity of the situation that necessitated she quit her job when she did.

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 quit work with good cause, Hearing Decision 17-UI-84850 is reversed, and this matter is remanded for development of the record.

DECISION: Hearing Decision 17-UI-84850 is set aside, and this matter remanded for further proceedings consistent with this order.⁵

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

⁵ **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-84850 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.

DATE of Service: July 3, 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. 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.