

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0831

Reversed & Remanded

PROCEDURAL HISTORY: On April 4, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 124825). Claimant filed a timely request for hearing. On May 18, 2017, ALJ Frank convened a hearing at which claimant did not appear and issued Hearing Decision 17-UI-83717, dismissing claimant's request for hearing. On May 31, 2017, claimant filed a request to reopen the hearing. On June 28, 2017, ALJ Monroe conducted a hearing, and on June 30, 2017 issued Hearing Decision 17-UI-87048, allowing claimant's request to reopen and affirming decision # 124825. On July 10, 2017, claimant filed an application for review with EAB.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the ALJ's findings, analysis and conclusion with respect to allowing claimant's request to reopen as set out in Hearing Decision 17-UI-87048 are **adopted**.

CONCLUSIONS AND REASONS: Hearing Decision 17-UI-87048 is reversed and this matter remanded for further development of 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 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.

Claimant testified at hearing that she left work in Medford, Oregon to move to Iowa with her boyfriend because they desired to escape the crime and lack of safety in the mobile home park in which they lived in the Medford area, could not locate an affordable residence in an acceptably safe neighborhood from which she could commute to work, and had purchased an affordable residence in Iowa. In Hearing

Decision 17-UI-87048, the ALJ concluded that claimant failed to show good cause for leaving work, reasoning that she did not show that remaining at the mobile home park in Oregon posed any immediate danger for her or that she was financially precluded from renting, as opposed to purchasing, a residence in a safe area of Medford. Hearing Decision 17-UI-87048 at 4. However, the ALJ failed to sufficiently develop the evidence to support those conclusions and to allow EAB to determine whether or not claimant had good cause to leave work.

At the outset, the ALJ should have explored in more detail the impacts on claimant of residing in the mobile home park and the harms she experienced from living in it. The ALJ should inquire of claimant if she feared or had trepidations about staying in the park and, if so, what she was concerned about. The ALJ should also inquire about any reasons that remaining in the park was uncomfortable, unpleasant or detrimental to claimant and to describe how it was. The ALJ should further explore the nature and extent of claimant's emotional or other reactions to living in the park, if any, and any adverse symptoms that she developed that she attributed to continuing to live in the park. To the extent possible and as specifically as possible, the ALJ should develop the evidence concerning any emotional or other harms claimant experienced from residing in the park and which may have motivated her to move from the park.

With respect to claimant's decision to move to Iowa claimant testified generally that she and her boyfriend could not afford to purchase a house in an acceptably safe area in or around Medford, and could not afford to rent a residence there, either of which would have enabled her to continue working for the employer in Medford. Audio at ~30:42, ~32:43, ~33:50. The ALJ should inquire of claimant if she and her boyfriend shared the rent in the mobile home park, how they divided up responsibility for that rent and whether they purchased the house in Iowa together and, if so, the relative contributions of both to the purchase price. The ALJ also should ask about the amount of the monthly rent for the mobile home in the Medford mobile home park, the price at which the house in Iowa was purchased, the amount of the mortgage and down payment on that house and the amount of the monthly mortgage payments. The ALJ should additionally inquire as to claimant's monthly earnings while she was living in the mobile home park, the monthly earnings of the boyfriend during that same time and the amount of savings they had collected by the time the Iowa house was purchased, which apparently was sufficient to allow claimant and her boyfriend to make a year of mortgage payments on the Iowa house if both remained unemployed in Iowa, and also sufficient to make the down payment on the Iowa house. Audio at ~41:20.

To place in perspective claimant's alleged inability to afford a residence in Medford from which she could have continued to work for the employer, the ALJ should develop further the evidence on claimant's efforts to locate an affordable rental residence in the Medford area, including whether there were any rentals in areas that claimant considered adequately safe, the maximum amount that claimant and her boyfriend could spend together on rent each month, and why. As well, the ALJ should inquire into how claimant went about trying to locate affordable rentals in Medford, the length of time she spent trying to locate an affordable residence, the number of rentals claimant inquired into, the range of monthly rental amounts for the minimally adequate safe rentals that claimant located and any reason(s), in addition to cost that she was unable to locate a suitable rental residence in the Medford. The ALJ should make similar inquiries to explore claimant and her boyfriend's inability to afford to purchase a house in the Medford area, including how claimant went about trying to locate an acceptable and affordable house they could purchase, how long claimant spent trying to locate an affordable house to

purchase, the maximum purchase price, maximum down payment and maximum monthly mortgage payments that claimant and her boyfriend were able to afford for a house in the Medford area and why, the number of houses claimant inquired into and the range of purchase prices, down payment amounts and monthly mortgage amounts for houses in adequately safe neighborhoods in the Medford area and any reason(s), in addition to purchase price, that she was unable to locate a suitable house to purchase in Medford. Finally, the ALJ should ask claimant to explain all the reasons she decided to purchase a house in Iowa rather than secure a rental residence in the Medford area. To the extent possible, the ALJ should fully flesh out the details of claimant's position that she could not afford to stay in Medford.

Finally, claimant's testimony was not completely clear about how the decision was made to purchase a house in Iowa and move to Iowa and whether that decision was a joint one or whether it was made by claimant's boyfriend. Audio at ~36:55. The ALJ should explore claimant's statement that the boyfriend traveled to Iowa, told claimant he wanted to buy a particular house in Iowa and announced that they were going to move to Iowa, including inquiring into the extent to which both claimant and the boyfriend participated in the decision and whether claimant could have vetoed the decision to move to Iowa or, had she tried to do so, if the boyfriend would have moved to Iowa without her. If it appears that the boyfriend was the decision maker or the motive-force behind the decision to move to Iowa, the ALJ should, as appropriate, develop the evidence about why claimant decided to accompany the boyfriend to Iowa, if her concern was that she needed to move to preserve her relationship with the boyfriend and, if so, on what factors or statements she based those concerns. If relevant, the ALJ should ask claimant to describe the detriment to her if she did not accompany boyfriend in the move to Iowa. Absent the inquiries set out above, EAB cannot determine whether claimant was had good cause to leave work 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 had good cause to leave work, Hearing Decision 17-UI-87048 is reversed, and this matter remanded for further development of the record.

DECISION: Hearing Decision 17-UI-87048 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: August 3, 2017

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-87048 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. 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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