

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0899**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On May 26, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work with good cause (decision # 85217). The employer filed a timely request for hearing. On July 11, 2017, ALJ Seideman conducted a hearing, and on July 12, 2017 issued Hearing Decision 17-UI-87815, affirming the Department’s decision. On July 28, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Hearing Decision 17-UI-87815 is reversed, and this matter remanded.

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).<sup>1</sup> 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 had good cause for quitting work, finding as fact that claimant felt growing stress and pressure due to her work situation, sought medical help and was prescribed medication, and that things “got to the point where she felt she could not take it any more” and quit her job. Hearing Decision 17-UI-87815 at 2. The ALJ summarily concluded that her situation was “so

<sup>1</sup> It appears claimant’s anxiety condition was situational, as it resolved within two weeks of her work separation. It was not, therefore, a permanent or long-term impairment, making the appropriate standard that of a reasonable and prudent person without impairment.

grave that she didn't have any reasonable alternative but to quit." *Id.* We disagree that the record, as developed, supports that conclusion, and remand for additional evidence.

There is no dispute on this record that claimant had an adverse health reaction to her working conditions, nor is there any dispute that it was severe. She had severe anxiety and night terrors, and sought medical intervention to help her cope with the situation. Given that two weeks away from the work environment was sufficient to resolve her symptoms and condition, however, the record does not show that taking time off work was not a reasonable alternative to quitting. Nor does the record as it was developed at the first hearing establish that claimant lacked other reasonable alternatives to quitting work.

On remand, the ALJ should ask why claimant did not tell her supervisor that she was upset or that she felt that she had been scowled at. The ALJ should ask why claimant did not tell her supervisor that she was so upset by the situation that she was considering quitting her job over it, or that she felt the situation was causing her so much stress and anxiety that she felt she had to quit her job over it. Claimant said she did not go to human resources because she feared retaliation, but claimant did not explain why she feared retaliation, what she thought "retaliation" would look like in that context, or what she thought would happen if she was retaliated against. The ALJ should ask why claimant did not tell human resources, or any other manager, that she was so upset by her working conditions that she felt she was going to have to quit if things did not change.

The employer had many work locations. The ALJ should ask where those locations were. The ALJ should ask claimant why she did not seek a transfer to one of them, or why she thought seeking a transfer would have been unreasonable for her given that she felt unable to continue working in the location that was causing her to have severe symptoms of ill health. The ALJ should ask claimant why she did not take time off work, call in sick, or go home from work sick when she felt too overwhelmed by the working conditions. The ALJ should ask claimant why she felt it was unreasonable for her to do so, and ask any other questions to establish whether and why claimant thought that going home or staying home from work was not a reasonable alternative to quitting her job.

Claimant testified that she did not ask for a leave of absence from her job because she was required to give 30 days' notice of her request for leave; however, claimant also described a situation that was ongoing for approximately four months, and her witness described it as being ongoing for approximately six months. Given that context, needing to give 30 days' advance notice of time off does not seem as significant as it would have if the period of time involved was shorter. The ALJ should therefore ask claimant why she chose not to apply for or ask for a leave of absence from work when the situation that was so disturbing to her was ongoing over several months. Given that claimant's symptoms were the result of her working conditions, and that they improved to the point that she did not need medication after only two weeks away from work, the ALJ should ask claimant why she felt asking for some time off work was not a reasonable alternative to quitting her job. The ALJ should ask claimant why, given that she was undergoing medical treatment during the relevant time, and feeling increased stress, she did not ask her doctor for a note ordering to take time off from work, or excusing her from working. The ALJ should ask those, and any relevant follow-up questions he deems necessary for development of a full record, allow the parties the time to augment any testimony, and allow them to respond to any evidence presented by the opposing party.

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-87815 is reversed, and this matter is remanded for further development of the record.

**DECISION:** Hearing Decision 17-UI-87815 is set aside, and this matter remanded for further proceedings consistent with this order.<sup>2</sup>

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

**DATE of Service:** August 22, 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>2</sup> **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-87815 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.