

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0931**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On June 15, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 81821). Claimant filed a timely request for hearing. On July 17, 2017, ALJ Janzen conducted a hearing, and on July 18, 2017, issued Hearing Decision 17-UI-88187, affirming the administrative decision. On August 4, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Leavitts Freight Service employed claimant as a long haul truck driver from May 2 until May 20, 2017.

(2) On May 17, 2017, claimant left the employer's facility to take a load to Fremont, California. The driver dispatcher made an appointment to have claimant unload the truck in Fremont at 7 a.m. on May 18. While she was on the way to Fremont, claimant contacted the dispatcher and said that she would be unable to unload the truck at 7 a.m. on May 18 because she would have driven the maximum hours she could legally drive when she arrived in Fremont and would need 10 hours "off the clock" before she could begin working again.<sup>1</sup> The dispatcher indicated that she should continue with the trip, and did not offer to provide her with any assistance.

(3) Claimant arrived in Fremont at 11:39 p.m. on May 17. She parked her truck beside the office where she needed to unload, and went to sleep. Because the law required that she be "off the clock" for 10 hours, she could not legally begin working again until 9:41 a.m. on May 18. Claimant unloaded the truck at 7 a.m. on May 18, however, to comply with the dispatcher's instructions.

(4) Prior to sending her to Fremont, the dispatcher had told claimant that he would assign her a route from California back to Oregon. On May 18, 2017, however, he changed this assignment and told claimant she was now assigned to drive a load from California to Nevada. Claimant had no change of

<sup>1</sup> By law and regulation, a truck driver can only drive 11 hours during a 14 hour period; once the 11 hour maximum is reached, the driver must be "off the clock" for at least 10 hours before working. Any time spent unloading the truck was considered time "on the clock."

clothing and no food in her truck and did not want to go to Nevada. Claimant called the employer, told the dispatcher she would take the load to Nevada, and also told the dispatcher to assign her a load that would take her from Nevada to Oregon because “that’s it” – she was quitting. Audio recording at 26:09.

**CONCLUSION AND REASONS:** Hearing Decision 17-UI-88187 should be 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). 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 his employer for an additional period of time.

The ALJ concluded that claimant quit her job because “her manager failed to schedule a delivery appointment to assist her in maintaining compliance with her driving requirements” and because her manager scheduled her for a delivery in Nevada, breaking a previous commitment to schedule her to return to Oregon. Hearing Decision 17-UI-88187 at 2. The ALJ found that the manager’s actions created a grave situation for claimant, but also found that claimant had the reasonable alternative of attempting to speak to another supervisor or the employer’s sales and operations manager about her problems with the dispatcher. Because claimant failed to do so, due to her concern that she would be disciplined if she did, the ALJ concluded that she did not demonstrate good cause for voluntarily leaving work. Hearing Decision 17-UI-88187 at 3. We find that the record does not support the ALJ’s conclusion, and conclude that additional evidence is required before we can determine whether claimant had good cause for voluntarily leaving work when she did.

In regard to the reason why claimant quit her job, the record shows that although claimant was upset about the dispatcher’s directive to make a 7 a.m. delivery on May 18, work that she could not legally perform, she did not tell the employer she was leaving until *after* the dispatcher told her to take a load from California to Nevada. On remand, the ALJ must ask claimant when she decided to quit, and whether she would have quit had she not been assigned to drive from California to Nevada.

In regard to the alternatives other than quitting available to claimant, the ALJ failed to make an inquiry sufficient to determine whether they were reasonable. Claimant testified that she hesitated to complain about the dispatcher, because when she took a problem to a manager “it backfires onto the driver.” Audio recording at 20:37. On remand, the ALJ must ask claimant the following questions: Was claimant aware of a manager (other than the dispatcher) who was available on May 17 or 18 and to whom she could have complained about her assignments? What consequences did she believe she would suffer if she told another manager that the dispatcher wanted her to perform work she could not legally perform? What problems or issues, if any, had she discussed with a manager prior to May 17? What was the outcome of these discussions, if they occurred? Did these discussions “backfire” on her or other drivers, and if so, how? Did she believe that the dispatcher would treat her unfairly if she complained about him to another manager? If so, what was the basis for her belief? Did she believe

that the dispatcher or another manager would discipline her if she made a complaint about the dispatcher? If so, what discipline did she believe would be imposed? The ALJ should ask any other questions necessary to determine whether claimant had reasonable alternatives to voluntarily leaving 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 or not claimant had good cause for quitting work, Hearing Decision 17-UI-88187 is reversed, and this matter is remanded for development of the record.

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-88187 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.

**DECISION:** Hearing Decision 17-UI-88187 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and J. S. Cromwell;  
D. P. Hettle, 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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