

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1156**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On August 8, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 111853). Claimant filed a timely request for hearing. On September 18, 2017, ALJ Meerdink conducted a hearing, and on September 19, 2017 issued Hearing Decision 17-UI-92878, affirming the Department's decision. On September 26, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB, and a copy to the employer. Claimant's argument contained information that was not part of the hearing record, and contained no explanation of factors or circumstances beyond claimant's reasonable control that prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision. However, because the case shall be remanded to the Office of Administrative Hearings for further information, claimant may offer the new information that she sought to present by way of her written argument at the hearing on remand. At that time, the ALJ will decide if that information is relevant to the issues on remand and should be admitted into evidence, and the employer would have the opportunity to respond to the information.

**CONCLUSIONS AND REASONS:** Hearing Decision 17-UI-92878 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 P2d 722 (2010). Claimant had celiac, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities

of an individual with such impairment would have continued to work for her employer for an additional period of time.

Claimant also had ulcers and other chronic stomach-related symptoms, including diarrhea and vomiting. The record does not show if claimant's ulcer condition was permanent or long-term, or if claimant had another diagnosis, in addition to ulcers and celiac, that caused her stomach symptoms. The ALJ should ask claimant if she had been diagnosed with other conditions that are permanent or long-term. The ALJ should also ask claimant if she experienced other symptoms, the frequency of her symptoms, and what, if anything, caused her symptoms to occur. The ALJ should ask claimant what effect claimant's medical conditions had on her quality of life, how debilitating, if at all, they were, and how and to what extent those symptoms might have been exacerbated by owners' treatment of claimant. The ALJ should ask claimant about the treatment she received for her medical conditions, what advice she received from medical professionals to improve her symptoms, and what claimant did to address her symptoms. The ALJ should ask claimant if her symptoms had changed since she received treatment. The ALJ should ask claimant if she believed her medical conditions were affected by her work environment, and why she believed that. The ALJ should ask claimant the status of her health at the time she quit. The ALJ should ask the employer if claimant discussed her health conditions with the employer or asked for changes to be made at work to address her conditions, and, if she did not, why she did not. The ALJ should ask the employer what sick leave and medical leave options were available to claimant before she quit.

Claimant described an incident when one of the owners became upset with claimant when she assisted a coworker with work preparing packages for mailing that was not assigned to claimant. Claimant described the owner as yelling "violently," with "spit coming out of his mouth," and "just screaming." Transcript at 16. The ALJ should ask claimant how she reacted to the incident and if she feared for her safety at that time, and if so, why. How long did that incident last? How long did the owner yell at claimant? Why did claimant not quit at that time? Did the owners discuss that incident with claimant afterward? Did the owners' treatment of claimant change at all after that incident? The ALJ should ask claimant if she ever felt unsafe during an owner's outburst. The ALJ should ask the owner involved in the incident what claimant said and did during the incident.

Claimant testified that one owner discussed her personal and medical information with employees and others. The ALJ should ask claimant if she recalled specific incidents of that nature, and the effect each incident had on claimant. The ALJ should ask claimant if the owner's conduct in that regard contributed to claimant's decision to quit work when she did, and why. The ALJ should ask the employer if claimant's allegations are accurate. The ALJ should ask claimant if she ever complained to the owner about the owner repeating claimant's personal information.

The ALJ should ask the claimant if she kept a record of conduct at work that contributed to dissatisfaction with her work environment, and what her records state. The ALJ should ask the employer to respond to each allegation.

Claimant made allegations of racist comments made by employees at work. The ALJ should ask claimant if any of the comments were directed at claimant, and if yes, why she believed that. The ALJ should ask the employer if it knew claimant was Native American. The ALJ should ask claimant if she complained about racist comments she heard at work, when she complained, and the employer's

response. The ALJ should ask the employer if it took any corrective action when a report was made of racist comments in the workplace. The ALJ should ask claimant if the racism she witnessed at work contributed to her decision to leave work when she did, and if yes, why.

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 did not develop the record necessary for a determination of whether claimant had good cause to voluntarily leave work, Hearing Decision 17-UI-92878 is reversed, and this matter is remanded for development of the record.

**DECISION:** Hearing Decision 17-UI-92878 is set aside, and this matter remanded for further proceedings consistent with this order.

J. S. Cromwell and D. P. Hettle.

**DATE of Service: October 27, 2017**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-92878 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](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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