

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1365

Reversed & Remanded

PROCEDURAL HISTORY: On October 19, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 82732). Claimant filed a timely request for hearing. On November 20, 2017, ALJ Seideman conducted a hearing, and on November 22, 2017 issued Hearing Decision 17-UI-97548, affirming the Department's decision. On November 27, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB that contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control 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. We considered claimant's argument to the extent it was based on the record, and not on new information.

CONCLUSIONS AND REASONS: Hearing Decision 17-UI-97548 is reversed and this matter remanded.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he (or she) proves, by a preponderance of the evidence, that he had good cause for leaving work when he 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 the employer for an additional period of time.

Claimant was an excavator operator for the employer, a logging company in Alaska, for which he worked from August 16, 2017 until he quit on September 23, 2017. Prior to working for the employer, claimant worked as a heavy equipment operator in Southern Oregon. After that job ended, he received a

tentative offer of employment managing a 500 acre reserve for an out of state couple, which claimant expected to begin shortly after the housing he and his wife were to reside in on the property was improved, the date of which was uncertain. Claimant concluded that he needed work and learned that the excavator operator job for the employer was available in August and scheduled to last until December 15, 2017. The job paid approximately the same as his prior excavator operator job but was advertised as potentially requiring substantial overtime. Claimant took the job due to the expected overtime, its location in Alaska which was attractive to claimant and the fact that it would only last until December 15 which would allow him to return to Oregon and begin the expected job managing the acreage for the out of state couple. However, after claimant began work for the employer, he realized, among other factors, that there were unanticipated living fees he had to incur, the working conditions and equipment were what he considered “unsafe”, the expected overtime had not materialized and claimant’s wife, who had remained in Oregon, “needed help with personal issues/finances requiring [his] attention.” Exhibit 1. Claimant decided that it was time to quit and return to Oregon to begin his expected acreage management job, gave the employer two weeks’ notice that he was quitting and did so on September 23, 2017. However, after claimant returned to Oregon, he learned that acreage management job offer had been withdrawn.

At hearing, claimant asserted that he quit work due to a combination of the 23 reasons listed on his exhibit. Exhibit 1. The ALJ inquired about some of the reasons claimant listed and ultimately concluded that claimant voluntarily left work without good cause, reasoning, “the situation was not so grave that [claimant] didn’t have any reasonable alternative but to quit.” Hearing Decision 17-UI-97548 at 3.

However, at the hearing, the ALJ failed to clarify with claimant what, exactly, of the 23 reasons listed, was the proximate cause, or the triggering factor, that caused claimant to make the decision to quit when he did. For that reason, we have concluded that the record was not sufficiently developed to support the ALJ’s conclusion. On remand, the ALJ should inquire sufficiently to determine why claimant presented his quit notice to the employer when he did and what claimant did, if anything, to avoid quitting for that reason. For example, why did claimant consider his working conditions so unsafe that he could not have continued to work for the employer until December 15, the anticipated end of the job in question? If claimant’s reason for quitting was his wife’s circumstances or “personal issues/finances requiring [his] attention” what were they and why was the situation so grave that he had to leave immediately? What actions, if any, did he take to avoid having to leave Alaska 11 weeks before the scheduled end of his job? Finally, if neither of those reasons were the proximate cause of his decision to quit on September 23, what was, and what alternatives did claimant explore before quitting for that reason?

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 with or without good cause, Hearing Decision 17-UI-97548 is reversed, and this matter is remanded for development of the record.

DECISION: Hearing Decision 17-UI-97548 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: January 5, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-97548 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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