

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0168**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On January 19, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 111745). Claimant filed a timely request for hearing. On February 1, 2018, ALJ Kangas conducted a hearing at which the employer did not appear, and on February 7, 2018 issued Hearing Decision 18-UI-102753, affirming the Department's decision. On February 14, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument that largely repeated the information she provided during the hearing, as well as the documents that the ALJ admitted into evidence at the hearing as Exhibit 1. To the extent that any new information was presented in claimant's written argument to EAB, claimant may offer it during the hearing on remand and the ALJ will admit it if it is relevant and material to the issues on which this matter had been remanded.

**CONCLUSIONS AND REASONS:** Hearing Decision 18-UI-102753 is reversed and the matter is remanded for further development of the record.

At the initial hearing in this matter, it was not disputed that claimant voluntarily left work. 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). For a claimant with a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h), good cause for leaving work is such that a reasonable and prudent person with the characteristics and qualities of a claimant with such impairment would have left work.

At hearing, although claimant testified that she left work for combination of reasons, it appeared that the proximate cause of her leaving was her belief that the workplace, particularly the owner's treatment of

her, created stress and anxiety that exacerbated her pre-existing hypertension to an extent that her health was jeopardized. Transcript at 7-8, 11, 13, 16-17, 19, 44-47. In Hearing Decision 18-UI-102753, the ALJ concluded that claimant did not show that any of the reasons she cited as contributing to her decision to leave work constituted good cause, reasoning in relation to her high blood pressure and other health concerns that she “did not provide any evidence beyond her own belief that working for the employer worsened her health” and, while “[c]laimant’s doctor advised her to reduce her stress, he did not tell her she should quit working.” Hearing Decision 18-UI-102753 at 3. However, the ALJ did not sufficiently develop the evidence as to the negative impact of the workplace on claimant’s health to allow EAB to determine whether or not the impact was good cause for claimant to leave work.

On remand, the ALJ should more fully inquire into the history of claimant’s hypertension and her anxiety, both of which were noted in the discharge instructions issued to claimant by a medical center on December 2, 2017. Exhibit 1 at 4. With respect to claimant’s anxiety, the ALJ should inquire when, if at all, it was diagnosed, by whom, and the circumstances that led to its diagnosis. With respect both to claimant’s hypertension, which was diagnosed in 2011, and her anxiety, the ALJ should ask for a summary of the types of medical treatment, prescribed medications, and medical oversight claimant has received for both since diagnosis. The ALJ should also explore the seriousness of both conditions, including how high claimant’s blood pressure has reached in the past, a description of the symptoms claimant experienced due to elevated blood pressure levels or anxiety levels, the impact of those symptoms on claimant’s usual activities, and a description of the steps claimant has taken to control both conditions.

With respect to claimant’s health during the time claimant worked for the employer, the ALJ should inquire into whether claimant sought professional treatment for either her anxiety or hypertension from September 6, 2017 through December 1, 2017 and, if so, the circumstances led her to do so. The ALJ should also inquire into the specifics of how either condition impacted claimant and her ability to function at any time during that period of her employment. The ALJ should further seek information about the specific workplace stressors that exacerbated claimant’s anxiety or hypertension and the reason(s) that claimant attributes any such exacerbation(s) to occurrences in the workplace rather than in her personal life. The ALJ should explore if any stressors or potential stressors were present in claimant’s personal life outside of work that influenced her blood pressure or level of anxiety and how claimant differentiated between workplace and other stressors. For example, did claimant notice that her blood pressure rose when she was at work and not when she was at home, progressively became more elevated throughout the workday or was lower and better managed when she was not at work? In addition, the ALJ should ask claimant to describe the types of occurrences that caused her blood pressure to become elevated and inquire into whether occurrences of those types occurred only when she was at work or if they also occurred when claimant was not at work. The ALJ also should ask claimant whether it was just being at work in general that increased her anxiety or blood pressure level or whether it was due to specific types of interaction(s) with the owner and, if so, to describe those types of interactions and the types of symptoms in relation to them that claimant experienced. The ALJ should also inquire whether claimant ever discussed with the owner the negative impacts that the workplace or her interactions with the owner were having on her health and, if so, when, what she stated to the owner and what the owner’s response was.

In connection with claimant’s trip to the hospital on December 2, 2017, the ALJ should ask claimant if she thinks anything triggered that trip other than the owner’s text message to her about overbooking and

her discovery of the job announcement on the employer's website, and her basis for this attribution. The ALJ should also ask claimant to describe the symptoms or what it was about her bodily reactions and/or sensations that evening that caused her to decide to visit the emergency department, what her measured blood pressure level was upon reporting to the hospital, the treatment that the doctor provided to her at the hospital, and what, if anything, the physician advised in addition to generally reducing her stress levels. The ALJs should further ask claimant if she was released from the hospital emergency department the same evening that she was admitted and, if she knows, what her blood pressure level was at the time she was released. In addition, the ALJ should inquire if claimant followed the discharge instructions from the emergency physician and saw her primary care physician and if not, why not. If so, the ALJ should ask claimant when she saw the primary care physician, what treatment the physician provided to her, if the primary care physician changed her medications or dosages and what, if anything, the physician advised her.

The ALJ also should ask claimant if, between when she left the hospital after the December 2, 2017 visit to the emergency department and December 23, 2017, there were any workplace occurrences that exacerbated her anxiety levels or her blood pressure and, if so, when they occurred, what they were. The ALJ also should ask claimant what symptoms led her to believe her anxiety and blood pressure were exacerbated, to what stressors does claimant attribute the exacerbation(s), did claimant seek medical treatment for any exacerbations during this time period and, if not, why not. Finally, the ALJ should inquire of claimant if her blood pressure or anxiety improved after she quit work and, if so, how she became aware of this improvement, the extent of the improvement, how soon after she left work the improvement occurred, and to what she attributes this improvement and why. If there has been no improvement in either condition since she left work, the ALJ should further ask claimant if she still attributes her blood pressure or the negative health she experienced before December 23, 2017 to the workplace or her supervisor's treatment of her even though there was no improvement after she left work, and 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 failed to develop the record necessary for a determination of whether claimant had good cause to leave work when she did, Hearing Decision 18-UI-102753 is reversed, and this matter remanded for further development of the record.

**DECISION:** Hearing Decision 18-UI-102753 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** March 13, 2018

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 18-UI-102753 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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