

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0193

Reversed & Remanded

PROCEDURAL HISTORY: On January 9, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 81129). Claimant filed a timely request for hearing. On February 13, 2018, ALJ Murdock conducted a hearing, and on February 14, 2018 issued Hearing Decision 18-UI-103292, affirming the Department’s decision. On February 20, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision. However, claimant may testify to the contents of the argument during the remand hearing, or submit the document into evidence at the remand hearing in accordance with the procedures described in the notice of hearing.

CONCLUSIONS AND REASONS: Hearing Decision 18-UI-103292 should be set aside and this matter remanded for additional proceedings.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he 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). An individual with a permanent or long-term “physical or mental impairment” as defined at 29 CFR §1630.2(h) 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 his employer for an additional period of time.

The ALJ found as fact that claimant quit work because he was “tired of being required to work in the shipping department,” as it was “heavy labor work and was hard on his body.” Hearing Decision 18-UI-

103292 at 1. The ALJ concluded that while those and other concerns “may have been difficult,” they were not so grave that claimant did not have “the reasonable alternative of discussing his concerns with the human resources manager or the integrity hotline in an effort to seek possible resolutions before quitting work.” *Id.* at 2. We disagree that the record supports those findings.

Claimant consistently argued at the hearing that, because of having to work in the shipping department, his body hurt, the work “kills your body,” that he had to leave for his health, that the employer “work[ed] you into the ground,” and that he was physically incapable of doing the job anymore. Given those circumstances, the ALJ had an obligation to question claimant about his physical condition and the effect of the shipping department work on his body, what hurt, how badly, what effect that had on his work and personal life, if he had any diagnosed impairments, whether he sought treatment, how he dealt with his pain, and whether or how he ever communicated his pain or physical condition to his supervisor or anyone else at the employer’s business in response to being told to work in the shipping department or in the course of his work there, and whether that communication occurred years ago when he transferred out of the shipping department or closer in time to when he quit his job. Without a fully developed record as to claimant’s physical condition, pain level, and the effect that had on him, we cannot determine whether his physical condition or pain amounted to a grave situation, nor can we determine whether pursuing alternatives to quitting work would have been reasonable under the circumstances.

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 for leaving work, Hearing Decision 18-UI-103292 is reversed, and this matter is remanded for development of the record.

DECISION: Hearing Decision 18-UI-103292 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 19, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 18-UI-103292 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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