

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0361**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On February 23, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work without good cause (decision # 142621). Claimant filed a timely request for hearing. On March 21, 2018 and March 22, 2018, ALJ Janzen conducted a hearing, and on March 23, 2018 issued Order No. 18-UI-105831, concluding claimant voluntarily left work with good cause. On April 11, 2018, employer filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Order No. 18-UI-105831 is reversed and this matter remanded.

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). Claimant had post-traumatic stress disorder, anxiety and depression, which may be considered permanent or long-term “physical or mental impairments” as defined at 29 CFR §1630.2(h). A claimant with those impairments 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.

The ALJ concluded that claimant quit work with good cause, reasoning that although claimant’s workload and duties did not significantly change during the period preceding her decision to quit work, claimant felt they did, and that the employer created a hostile work environment by singling her out and yelling at her.<sup>1</sup> The ALJ wrote that, while claimant’s reaction to the work environment “may have been magnified due to the external factors in claimant’s life, a person with claimant’s characteristics and

<sup>1</sup> Order No. 18-UI-105831 at 3.

qualities would have believed she faced a grave situation.”<sup>2</sup> However, the record was not developed sufficiently to support the ALJ’s reasoning.

At the hearing, claimant listed various things that occurred at work and in her private life, but did not explain the effects of those events on her employment, or explain why or to what extent those events affected her to the extent that she ultimately felt she had no reasonable alternative but to quit work. Likewise, while common sense suggests that claimant’s circumstances combined with her mental health during the period at issue might have made the employer’s work environment intolerable for claimant, whereas it might not have been intolerable for an individual without impairments, the record does not contain evidence substantiating that it did, much less in what way claimant’s mental health at the time affected her decision to leave work. Although claimant testified about an event on January 11<sup>th</sup> when someone yelled at her, and another occasion when he dropped a file, claimant did not explain what, if anything, changed between when those events occurred and February 1<sup>st</sup> when she quit work; the record therefore fails to show whether claimant quit work because of the perceived hostile environment or because she felt the employer did not respond to her concerns, and what it was about the situation that made claimant feel the only way she could resolve her concerns was quitting work.

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 work with good cause, Order No. 18-UI-105831 is reversed, and this matter is remanded for additional inquiry.

**DECISION:** Order No. 18-UI-105831 is set aside, and this matter remanded for further proceedings consistent with this order.<sup>3</sup>

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

**DATE of Service:** May 10, 2018

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<sup>2</sup> *Id.*

<sup>3</sup> **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-105831 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.