

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0411

Reversed & Remanded

PROCEDURAL HISTORY: On March 6, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 80644). Claimant filed a timely request for hearing. On April 3, 2018, ALJ Griffin conducted a hearing, and on April 4, 2018 issued Order No. 18-UI-106590, affirming the Department's decision. On April 20, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Order No. 18-UI-106590 should be set aside and this matter remanded for further 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). A claimant who quits work must show that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

The ALJ concluded that claimant quit work without good cause, finding as fact that claimant quit because he did not want to work the night shift in Salem or commute from his home in Portland, and was not willing to "try out the new schedule to see if it was something he could adapt to."¹ The ALJ reasoned that while claimant "believed that he would be too tired after working all night and commuting," he "had the reasonable alternative of working the night shift for a period of time to see if

¹ Order No. 18-UI-106590 at 2.

he could adapt to the working conditions.”² The record developed at the hearing does not support the ALJ’s conclusions.

On remand, the ALJ must ask claimant what effect he thought the new work schedule and commute would have on him, his health and his family. The ALJ must ask claimant why he thought that would be the effect without having tried the new work schedule and commute. The ALJ should ask claimant what he thought, or feared, might happen if he accepted the work assignment, and why he thought so. The ALJ must ask whether and to what extent claimant tried to communicate with the employer about his concerns regarding the shift, work location and hours. The ALJ must also ask whether the employer was willing or able to do anything to address those concerns had claimant voiced them.

Additionally, the work assignment the employer offered claimant was located in Salem, and claimant resided in Portland, making the work assignment likely outside claimant’s normal labor market and, therefore, potentially unsuitable for claimant.³ The ALJ should inquire with both parties about whether claimant customarily worked in the Salem area while working for the employer, whether it was customary in the industry for individuals from Portland to perform work in the Salem area, and any other questions necessary to determine whether work in the Salem area was suitable for claimant 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 voluntarily left work with or without good cause, Order No. 18-UI-106590 is reversed, and this matter is remanded for development of the record.

DECISION: Order No. 18-UI-106590 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: May 23, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-106590 or return this matter to EAB. Only a timely application for review of the subsequent hearing order will cause this matter to return to EAB.

² *Id.*

³ ORS 657.190 provides that factors to consider when determining whether work is suitable include, among other things, the prospects for securing local work in the customary occupation of the individual and the distance of the available work from the residence of the individual.

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