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State of Oregon
**Employment Appeals Board**
875 Union St. N.E.
Salem, OR 97311

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# EMPLOYMENT APPEALS BOARD DECISION
# 2018-EAB-0516

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On April 10, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 140006). Claimant filed a timely request for hearing. On May 9, 2018, ALJ Schmidt conducted a hearing, and on May 10, 2018 issued Order No. 18-UI-109121, affirming the Department's decision. On May 16, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written response to Order No. 18-UI-109121 in which she noted that the human resources representative to whom she directed her complaints about the general manager was not present to testify at the hearing and contended that the ALJ did not fully review the documents that were admitted into evidence as Exhibit 1 before issuing the order. In light of our disposition of this matter and the grounds for it, the employer or claimant may arrange for the human resources representative with whom claimant corresponded over the course of her employment to appear at the remand hearing and answer questions about the documents comprising Exhibit 1, the working relationship between claimant and the general manager, and whether claimant pursued reasonable alternatives before quitting work.[1]

**CONCLUSIONS AND REASONS:** Order No. 18-UI-109121 is reversed, and this matter is remanded for further proceedings.

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.

[1] Claimant may want to subpoena the human resources representative to ensure that she appears and testifies as witness at the remand hearing. Claimant should contact the Office of Administrative Hearings (OAH) if she wishes information on how to arrange for the issuance and proper service of such a subpoena at (503) 947-1515 or 1 (800) 311-3394. Claimant or the employer may obtain additional information about subpoenas or other evidentiary matters at www.oregon.gov/oah/Pages/UI_Publications2.aspx.

OAR 471-030-0038(4) (January 11, 2018). 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 her employer for an additional period of time.

In Order No. 18-UI-109121, the ALJ concluded that claimant did not show good cause for voluntarily leaving work, in part, because the manner in which the general manager was shown to have treated claimant was not sufficiently "egregious" to constitute a grave situation. Order No. 18-UI-109121 at 2. The ALJ further reasoned that claimant did not pursue the reasonable alternative of agreeing to participate in a conference with the general manager and one of the employer's human resources representatives that the representative had offered as a method of attempting to resolve the issues of which claimant complained. *Id*. However, the ALJ did not sufficiently develop the evidence to support this conclusion.

First, the human resources representative, with whom claimant had corresponded on many occasions about the general manager's treatment of her, and who had spoken with the general manager about his interactions with claimant, was not available to testify at the hearing and explain the nature of her participation in the relevant events, or her interactions with claimant and the general manager. Second, while the ALJ admitted into evidence as Exhibit 1 certain email correspondence between claimant and the human resources representative despite claimant's failure to have served it on the employer in advance of the hearing, the ALJ denied the request of the employer's witness that the hearing be postponed until that human resources representative was available to testify since that representative was the employer witness who had the most knowledge of that correspondence and the history of claimant's relationship with the general manager. Audio at ~5:14, ~6:58. Third, in her submission to EAB, claimant contended that had she appeared as a witness at hearing, the human resources representative would have "corroborated" that a "long-standing hostile [work] environment" toward claimant was created by the general manager's treatment of her. It appears to us that both parties believed that information from the human resources representative was highly relevant to the matters at issue and that the representative should have testified at hearing.

In light of the circumstances, the ALJ should not have admitted Exhibit 1 into evidence without postponing the hearing to enable the human resources representative to participate and explain her actions and communications with both claimant and the general manager. Accordingly, on remand, testimony should be taken from the human resources representative as it relates to the correspondence contained in Exhibit 1, any additional relevant correspondence or contacts not contained in Exhibit 1, other knowledge that the representative may have about the working relationship between claimant and the general manager, and any alleged "hostility," "belittlement," "condescension," "disrespect" or the like on the part of either in their interactions.

The ALJ should also explore with the human resources representative whether claimant pursued the reasonable alternatives that were available to her before quitting, whether a meeting between claimant, the general manager and the human resources representative was ever a reasonable alternative, and why the human resources representative stated on February 9, 2018 that she no longer believed that such a meeting could repair the working relationship between claimant and the general manager. Exhibit 1 at 10. On remand, the ALJ should also conduct a further inquiry based on Exhibit 1 asking claimant to explain exactly the behavior(s) of the general manager that she was complaining about or to which she

was objecting and giving the general manager, the human resources representative, or both, the opportunity to respond. In this regard, the ALJ should develop the evidence as appropriate in light of the contents of the documents in Exhibit 1, any other documents and the facts elicited from the witnesses' testimony on remand.

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 left work for good cause, Order No. 18-UI-109121 is reversed, and this matter remanded for further development of the record.

**DECISION:** Order No. 18-UI-109121 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: June 15, 2018**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-109121 or return this matter to EAB. Only a timely application for review of the subsequent Order will cause this matter to return to EAB.

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