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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-0667

Reversed & Remanded

PROCEDURAL HISTORY: On May 15, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 74017). The employer filed a timely request for hearing. On June 25, 2018, ALJ Amesbury conducted a hearing, and on June 28, 2018 issued Order No. 18-UI-112239, concluding claimant voluntarily left work without good cause. On July 2, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered the employer's written argument in reaching this decision. Claimant's argument contained information that was not part of the hearing record. Claimant asserted that the ALJ erred by failing to permit claimant to provide that information at hearing. It is not necessary for EAB to determine whether the ALJ erred because the case shall be remanded to the Office of Administrative Hearings (OAH) for further information and claimant may offer the new information that she sought to present by way of her written argument at the hearing on remand. At that time, the ALJ will decide if that information is relevant to the issues on remand and should be admitted into evidence, and the employer would have the opportunity to respond to the information. As it will state on the OAH notice for the hearing on remand, if the parties have documents that they wish to have considered at the hearing, they must provide copies of the documents to all parties and to the ALJ at OAH prior to the date of the scheduled hearing.

CONCLUSIONS AND REASONS: Order No. 18-UI-112239 is reversed and this matter remanded.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she (or he) proves, by a preponderance of the evidence, that he 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) (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 the employer for an additional period of time.

In Order No. 18-UI-112239, the ALJ concluded that claimant voluntarily left work without good cause. The ALJ reasoned that although claimant faced a grave situation because she no longer had a vehicle to use to perform her work duties, she did not consider reasonably available alternatives to quitting.[1] The ALJ reasoned that a reasonable and prudent person would have "fully explored" the employer's car rental program and contacted the employer for other options before quitting.[2] However, the ALJ did not develop the record sufficiently at hearing to support the conclusion that claimant voluntarily left work without good cause.

Claimant quit her position as a ride share driver for the employer because her car that she used to drive customers was damaged beyond repair in an accident, and claimant did not have another car to drive or the ability to purchase another car. The employer required a ride share driver to have an approved vehicle to drive. The employer's witness testified that in its Express Program, it worked together with a vehicle rental company that offered vehicles for the employer's ride share drivers to rent. Claimant did not consider the program to be a reasonable alternative to quitting because she understood from others that it was expensive, the cars were poorly maintained, and drivers were responsible for repairing normal wear on the vehicles. At hearing, claimant asked the employer if her understanding about the cost of the employer's vehicle rental partnership was accurate. Audio Record at 41:00 to 43:27. The ALJ responded that claimant's question was not something that could be resolved at the hearing. Audio Record at 43:28 to 43:34. However, claimant's question was relevant and additional information regarding the Express Program is necessary to determine if the rental program was a reasonable alternative to quitting.

On remand, the ALJ should request details about the Express Program from both parties such as, for example, how a ride share driver qualifies for the program to determine if claimant might have qualified for the program. The ALJ should ask the parties about the terms of the program, including the cost. The ALJ should ask claimant questions regarding whether it was financially feasible for claimant to rent a vehicle and how much she would have earned per hour, if anything. The ALJ should ask claimant how much she earned per hour from driving for the employer before her vehicle was damaged. Alternately, the ALJ should ask the parties if and how that amount could be discerned accurately from the exhibits. The ALJ should ask claimant for more detail about her understanding of the issues she identified with the rental program, such as liability for repairs on the rental vehicles and the condition of the vehicles, and should allow the employer an opportunity to respond to those concerns. The ALJ should ask claimant about her sources for that information.

[1] Order No. 18-UI-112239 at 3.

[2] *Id.*

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 with or without good cause, Order No. 18-UI-112239 is reversed, and this matter is remanded for development of the record.

DECISION: Order No. 18-UI-112239 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: August 1, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-112239 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.

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