

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0814

Reversed & Remanded

PROCEDURAL HISTORY: On June 20, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 90344). Claimant filed a timely request for hearing. On July 20, 2018, ALJ Shoemake conducted a hearing, and on July 27, 2018 issued Order No.18-UI-113962, affirming the Department’s decision. On August 15, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Order No. 18-UI-113962 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. 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-113962, the ALJ concluded that claimant did not show good cause for leaving work when she did. The ALJ reasoned that, although claimant “had concerns about the way another employee was spoken to,” her “primary reason for leaving work when she did was due to the bookkeeping duties” the employer wanted to assign to her. Order No. 18-UI-113962 at 2. The ALJ then limited her inquiry only to the matter of the bookkeeping duties and concluded that claimant failed to show that those duties reasonably presented a situation of gravity to her. Order No. 18-UI-113962 at 2. We disagree and conclude that the ALJ erred by limiting the focus of the good cause analysis only to the issue of the bookkeeping duties since claimant’s testimony and the employer’s exhibits showed that she left work due to the combined impact of several factors, including the proposed assignment of bookkeeping duties, issues with the employer’s trust account, the way in which the office administrator spoke to the

person who was training claimant and a statement that the owner made to claimant. To develop the record sufficiently to allow a determination of whether claimant left work for good cause, the ALJ must make an additional inquiry into the office administrator's and owner's statements.

The statement the owner made to claimant was, "This is a big job to swallow. Thank you for swallowing." Audio at ~10:40. With respect to this statement, the ALJ should ask claimant what she thought the owner meant by it, whether by innuendo or directly, and why she was so "embarrassed" over it and thought it was "kind of shameful to [her]." Audio at ~11:40, ~12:30. The ALJ should ask claimant to describe the owner's demeanor when he made the comment to her and whether he accompanied the comment with offensive body language or other actions directed at claimant that gave context to it. The ALJ also should ask claimant if she considered any other encounters with the owner similarly offensive and, if so, to describe them, when they occurred and what she did in response to them. The ALJ should further ask claimant how she reacted to the owner's comment when he made it, if she said anything to the owner in response to it and, if not, why not and, if she made any statement in response, what the owner said or did in reaction. The ALJ should also explore why claimant only told the employee who was training her about the owner's statement and why she did not tell any other employees of it, including the office administrator, the office coordinator, who apparently was claimant's officemate, and other employees in management. The ALJ should additionally elicit information as to what claimant thought would happen if she reported the owner's comment to particular employees and if, applicable, what she feared and why.

With respect to the statements that the office administrator made to the person who was training claimant, the ALJ should pin down what exactly the office administrator said to the trainer, her tone and how she said it, the loudness of her voice, the context in which it was said, whether what the office administrator said to the trainer was also directed at claimant, and why claimant was so offended to affected by it. The ALJ should explore whether claimant objected to the way the office manager spoke to employees other than her trainer or whether claimant's objections were limited to the manner in which she spoke to the trainer. Further, the ALJ should flesh out what specific negative impacts claimant thinks the manner in which the office administrator spoke to the trainer had on claimant. The ALJ should ask claimant if she made any complaints to the office administrator, the office coordinator or other employees in management about the manner in which the office manager spoke to the trainer, what she said and, if she said nothing, why. Finally, the ALJ should ask claimant if she spoke to the trainer about the office manager's statements she considered offensive and the substance of what was said.

The intent of this decision is not to limit the ALJ only to the specific questions or areas of inquiry outlined. In addition to asking the questions suggested, the ALJ should ask any follow-up questions she deems necessary or relevant to the nature of claimant's work separation and whether or not it should be disqualifying. The ALJ should also allow the parties to provide any additional relevant and material information about the work separation, and to cross-examine each other as necessary.

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 for good cause, Order No. 18-UI-113962 is reversed, and this matter remanded for further development of the record.

DECISION: Order No. 18-UI-113962 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: September 18, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No.18-UI-113962 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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