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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-0863

Reversed & Remanded

PROCEDURAL HISTORY: On July 31, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 100607). Claimant filed a timely request for hearing. On August 28, 2018, ALJ Holmes-Swanson conducted a hearing, and on August 29, 2018 issued Order No. 18-UI-115735, affirming the Department's decision. On September 4, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered claimant's written argument to the extent it was based on the record.

CONCLUSIONS AND REASONS: Order No. 18-UI-115735 is reversed, and this matter remanded to the Office of Administrative Hearings (OAH) for further proceedings consistent with this order.

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). An individual who leaves work due to a reduction in hours has left work without good cause unless continuing to work substantially interferes with her return to full time work, or unless the cost of working exceeds the amount of remuneration received. OAR 471-030-0038(5)(e).

In Order No. 18-UI-115735, the ALJ concluded that claimant quit work without good cause because the cost of working would not exceed her earnings, and claimant did not pursue the alternative of researching whether she would qualify for government assistance to defray her health insurance costs.[1] However, the record contains insufficient information to determine whether a reasonable person would have quit work under the conditions present when claimant quit work.

[1] Order No. 18-UI-115735 at 3.

Claimant testified that she "could not afford to commute an hour to work part time," and that the cost of working for the employer would exceed her earnings when she began the reduced schedule. Audio Record at 8:04 to 8:34, 12:39 to 13:09, 31:02 to 31:46. In support of her assertion, claimant listed the types of deductions that would be withheld from her weekly gross earnings of $173 (13 x $13.35), including dental insurance, medical insurance, social security and federal and state withholdings. Claimant also stated that her fuel cost to travel for work was $40 for three days of work. However, on remand, the ALJ must ask claimant what she anticipated each of those deductions would be when her hours were reduced, and if the dental and medical insurance were optional benefits provided by the employer. The ALJ should also ask claimant what other costs, if any, she had to commute to work. For example, the ALJ should ask claimant what her monthly vehicle maintenance costs were that she associated with her commute to work. The ALJ did not ask claimant if she had childcare expenses.

Under the referenced administrative rules, an individual may also show good cause for quitting work with reduced hours if the individual can prove by a preponderance of the evidence that continuing to work for the employer would substantially interfere with her return to full time work. Claimant testified during the hearing that she sought but did not find work by the time she quit working for the employer. The ALJ did not ask claimant whether, or how, working reduced hours in the store where she worked interfered with claimant's return to full time work, nor did she inquire whether any such interference was substantial, or in what way claimant considered any such interference substantial.

The employer argued at hearing that claimant complained to human resources about the reduction in her hours, but that claimant quit before the employer finalized her schedule or had the opportunity to address it. Audio Record at 33:09 to 34:16. The ALJ should ask the parties whether the employer edited the schedule after claimant complained, what changes were made, if any, and when the schedule became final. The ALJ should ask the parties if the schedule was finalized before or after claimant gave notice that she would quit work. The ALJ should ask the employer the likelihood that it would have increased claimant's hours for July 2018, given that it reduced other employees' hours at the same time, and did so based on business needs. The ALJ should ask the employer if the apparent reduction in hours was a long-term or temporary change, and if it was temporary, how claimant would have known that.

Finally, one factor to determine whether any work is suitable for an individual is the distance of the available work from the individual's residence. ORS 657.190. Claimant had a 40-mile commute each way for work, and the ALJ should ask claimant questions to determine if the commute created a grave situation for claimant due to her health or other factors in addition to the costs associated with the commute.

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 good cause, Order No. 18-UI-115735 is reversed, and this matter is remanded for development of the record.

DECISION: Order No. 18-UI-115735 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: October 4, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-115735 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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