

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0105

Affirmed
Disqualification
Eligible in Part; Ineligible in Part

PROCEDURAL HISTORY: On October 31, 2013, the Oregon Employment Department (the Department) served notice of two administrative decisions, the first concluding that claimant voluntarily left work without good cause (decision # 123611) and the second concluding that claimant was not able to work during the weeks of October 13, 2013 through October 26, 2013 (decision # 131108). Claimant filed timely requests for hearing on both decisions. On December 19, 2013, ALJ Wyatt conducted two hearings, and on December 31, 2013 issued Hearing Decision 13-UI-07461, concluding claimant voluntarily left work without good cause, and Hearing Decision 13-UI-07440, concluding claimant was not able to work during the week of October 13, 2013 through October 19, 2013 but was able to work during the week of October 20, 2013 through October 26, 2013. On January 17, 2014, claimant filed applications for review of both hearing decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 13-UI-07461 and 13-UI-07440. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 14-EAB-0105 and 14-EAB-0106).

Claimant submitted various documents to EAB, including a statement from a person purporting to have been a supervisor who quit work with the employer approximately one and one-half year before claimant left work, claimant's 2012 and 2013 W-2 forms from the employer and pay stubs for claimant from certain weeks in 2011. Claimant did not introduce those documents into evidence at either hearing and he did not provide an explanation of their relevance to the issues involved in either hearing. Although claimant contended he quit work because he was "harassed" and the person who purportedly prepared the statement asserted he left work due to a "very hostile work environment," there is no assurance that this supervisor was subject to same work circumstances as claimant at or around the time that claimant decided to quit work, and this supervisor did not present in the statement any information about any alleged incidents in which claimant was harassed. Audio of 8:15 a.m. Hearing (Audio 1) at

~10:18; ~10:32; ~12:13. For these reasons, the statement is does not appear relevant to the issues presented at the hearing on claimant's work separation, and we can discern no reason for its relevance to the issues presented at the hearing on claimant's ability to work. Because claimant did not contend he left work due to an inadequate amount of earnings, the relevance of the pay documents to claimant's work separation also is not clear to us. We can determine no relevance of the pay documents to the issue of claimant's ability to work. EAB did not consider the documents that claimant submitted since they do not appear relevant to the issues at either hearing and because claimant did not show that factors or circumstances beyond his reasonable control prevented him from offering this information during the hearings. *See* ORS 657.275(2); OAR 471-041-0090 (October 29, 2006). After reviewing the record, EAB agrees with the ALJ that, in connection with the hearing on claimant's work separation, claimant did not present sufficient specific information about any alleged harassment to show, more likely than not, that it was an objectively grave reason compelling him to leave work. *See* Audio 1 at ~4:33. ~5:28. ~9:30, ~10:32, ~12:13. In connection with the hearing on claimant's ability to work, EAB agrees with the ALJ that, by virtue of claimant's admission that he was medically restricted from working for five days following his October 16, 2013 surgery, he was not eligible to receive benefits during the week of October 13, 2013 through October 19, 2013 since he was not able to work for more than half of the days in that week. *See* OAR 471-030-0036(2)(a); Audio of 9:30 a.m. Hearing (Audio 2) at ~4:05, ~4:12, ~6:12, ~6:12.

EAB reviewed the entire hearing records. On *de novo* review and pursuant to ORS 657.275(2), the hearing decisions under review are **adopted**.

DECISION: Hearing Decisions 13-UI-07461 and 13-UI-07440 are affirmed.

Tony Corcoran and D. E. Larson;
Susan Rossiter, not participating

DATE of Service: **February 18, 2014**

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310, or visit the website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.