

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0376-R

*Request for Reconsideration Denied  
Appeals Board Decision 2014-EAB-0376 Remains Undisturbed.*

**PROCEDURAL HISTORY:** On December 30, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 164658). Claimant filed a timely request for hearing. On February 24, 2014, ALJ Murdock conducted a hearing, and on March 4, 2014, issued Hearing Decision 14-UI-11638, concluding claimant voluntarily left work without good cause. On March 11, 2014, claimant filed an application for review with the Employment Appeals Board (EAB). On April 23, 2014, EAB issued Appeals Board Decision 2014-EAB-0376 in which it affirmed Hearing Decision 14-UI-11638.

On April 28, 2014, claimant filed a written argument entitled “Evidence and Records Request” in which he asserted that in 2014-EAB-0376, EAB erred by “ma[king] no ruling at all” regarding his request that the board consider “Exhibits J, K and O” the ALJ declined to admit into the evidentiary record at hearing. Claimant contends that by doing so, EAB prevented those exhibits from being included in the “record on appeal.” Claimant’s 04/28/14 written argument at 1. We treat claimant’s argument as a request to reconsider our decision in 2014-EAB-0376 and write to clarify the nature and contents of the hearing record.

**CONCLUSIONS AND REASONS:** Claimant’s request for reconsideration should be denied for failure to identify a material error of fact or law.

Under ORS 657.290(3), EAB, may, upon its own motion or upon application of any party, reconsider a previous decision of EAB and such reconsideration may include the issuance of a new decision “to the extent necessary and appropriate for the correction of previous error of fact or law.” *See also* OAR 471-041-0145(1) (October 29, 2006).

In his April 28 argument, claimant asserted that EAB erred in 2014-EAB-0376 by “ma[king] no ruling at all” regarding his request that the board consider his “Exhibits J, K and O” the ALJ declined to admit into the evidentiary record at hearing. Although we declined to make a “ruling” regarding the admission of claimant’s Exhibits J, K, and O (marked by the ALJ as Exhibit 5), we agreed with the ALJ that these

exhibits were “immaterial or unduly repetitious” because they related to actions of the employer before or after claimant’s employment. Moreover, claimant’s failure to renew his offer of Exhibits J, K, and O during his testimony, as the ALJ suggested when she declined to admit them at the start of the hearing, did not constitute a circumstance beyond his reasonable control that prevented him from offering the information into evidence at hearing. Audio Record at 12:39 to 12:59; OAR 471-041-0090 (October 29, 2006).<sup>1</sup> Consequently, EAB’s failure to include those exhibits in the evidentiary record did not constitute an error of fact or law in need of correction.

Claimant’s remaining concern that EAB’s failure to include Exhibits J, K, and O in the evidentiary record forecloses him from raising that failure as error on appeal is misplaced. All of the hearing exhibits, whether admitted as part of the evidentiary record or not, remain part of the hearing record which would be transmitted to the Oregon Court of Appeals in the event an appeal is filed. Consequently, claimant would be able to renew his argument before the Court of Appeals.

Any remaining issues claimant raised in his April 28 letter were adequately addressed in Appeals Board Decision 2014-EAB-0376 and do not require additional consideration or clarification.

**DECISION:** Claimant’s request for reconsideration is denied. Appeals Board Decision 2014-EAB-0376 remains undisturbed.

Susan Rossiter, Tony Corcoran and J. S. Cromwell, *pro tempore*;  
D. E. Larson, not participating.

**DATE of Service:** May 7, 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.

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<sup>1</sup> Under OAR 471-041-0090 (1)(b), EAB may consider information not received into evidence at the hearing only if “[f]actors or circumstances beyond the party’s reasonable control prevented the party from offering the information into evidence at the hearing.”