

**EMPLOYMENT APPEALS BOARD DECISION**  
**2014-EAB-0532-R**

*Reconsideration Denied*

**PROCEDURAL HISTORY:** On January 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 143534). Claimant filed a timely request for hearing. On March 26, 2014, ALJ Wipperman conducted a hearing, and on March 27, 2014, issued Hearing Decision 14-UI-13561, concluding the employer discharged claimant but not for misconduct. On April 3, 2014, the employer filed an application for review with the Employment Appeals Board (EAB). On April 16, 2014, EAB issued Appeals Board Decision 2014-EAB 0532, affirming Hearing Decision 14-UI-13561. On April 18, 2014, the employer filed a written argument with the EAB.

**CONCLUSIONS AND REASONS:** Under ORS 657.390(3), EAB may, upon its own motion, reconsider a previous decision; reconsideration may include issuance of a new decision “to the extent necessary and appropriate for the correction of previous error of fact or law.” We grant reconsideration to address an issue raised by claimant’s written argument, but nevertheless adhere to our original decision.

In its written argument, the employer asks EAB to consider information that was “not offered at the hearing for circumstances beyond my control.” The evidence the employer asks EAB to consider consists of a statement by Kurt Kessler that after Kessler “laid claimant off work” on November 19, 2013, and told claimant that he (Kessler) would contact claimant when work became available, claimant subsequently refused an offer of work that Kessler made on a later date. Kessler asserted that he did not offer this evidence at the hearing because he had “a pre-scheduled out of town appointment on the day of the hearing and could not attend [the hearing].” Kessler acknowledged that his wife testified at the hearing about conversations with the claimant, but asserted that his (Kessler’s) testimony about phone calls to the claimant are needed to “complete the record under review.”

EAB may consider new information that was not part of the hearing record only if the information is relevant and material to EAB’s determination, and the party offering it shows that it was prevented by

circumstances beyond its reasonable control from presenting the information at the hearing. OAR 471-041-0090(2) (October 29, 2006). The evidence the employer urges us to consider is irrelevant. At issue in this case was a work separation that occurred on November 19, 2013. There was no dispute about what happened on that date: Kessler laid off claimant due to lack of work, and told claimant that he (Kessler) would contact claimant if and when work became available. Evidence concerning offers or refusals of work that occurred after November 19 have no relevance to a determination about the nature of the work separation that occurred on that date. Accordingly, we will not consider the additional evidence offered by the employer.

We adhere to our original decision in this matter because it contains no error of fact or law that requires correction. The ALJ did not err by concluding, based on undisputed evidence, that claimant's lay off due to lack of work was a discharge not for misconduct (Hearing Decision 14-UI-13561). EAB did not err by adopting this hearing decision.

**DECISION:** Reconsideration is denied and Hearing Decision 14-UI-13561 remains undisturbed.

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

**DATE of Service:** April 30, 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.