

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0615

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 7, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 125417). The employer filed a timely request for hearing. On March 25, 2014, ALJ Vaughn conducted a hearing, and on March 26, 2014 issued Hearing Decision 14-UI-13486, affirming the Department's decision. On April 15, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the employer's written argument.<sup>1</sup> On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**. We write only to address the employer's argument.

The employer does not dispute the ALJ's conclusion that claimant's February 19, 2014 discharge was not for misconduct.<sup>2</sup> Instead, the employer argues, as at hearing,<sup>3</sup> that a prior, potentially disqualifying, work separation occurred on or about February 5, 2014, when claimant and the employer agreed that he had to discontinue working for the employer as a commercial driver, and would begin working for the employer as a warehouse worker.<sup>4</sup>

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<sup>1</sup> With its written argument, the employer submitted a document that was not part of the hearing record, and failed to show that factors or circumstances beyond the employer's reasonable control prevented it from offering the document into evidence at the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), EAB considered only information received into evidence at the hearing when reaching this decision.

<sup>2</sup>; See Hearing Decision 14-UI-13486 at 2-3.

<sup>3</sup> Transcript at 26-27.

<sup>4</sup> See Hearing Decision 14-UI-13486 at 2, Finding of Fact 4.

OAR 471-030-0038(2)(b) (August 3, 2011) provides that if the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a quit. OAR 471-030-0038(2)(a). For purposes of OAR 471-030-0038(2), however, “work” means “the continuing relationship between an employer and an employee.” OAR 471-030-0038(1)(a). A work separation occurs only if the employer-employee relationship is severed. *Id.*

Here, it is undisputed that although claimant’s position with the employer changed on or about February 5, 2014, the employment relationship continued until severed by the employer on February 19, 2014. Thus, no work separation occurred on or about February 5, 2014.

**DECISION:** Hearing Decision 14-UI-13486 is affirmed.

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

**DATE of Service:** May 19, 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.