

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1150

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work with good cause (decision # 85215). The employer filed a timely request for hearing. On June 25, 2014, ALJ M. Davis conducted a hearing and issued Hearing Decision 14-UI-20375, concluding claimant voluntarily left work without good cause. On July 3, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

In written argument, claimant requested the opportunity to offer her medical records into the record. Claimant did not submit these medical records with her argument, or otherwise show what these records contained or why they were relevant and material to our decision. We construe her request as a request to have EAB consider additional evidence under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party offering the information shows it is relevant and material to our determination and the party was prevented by factors or circumstances beyond its reasonable control from presenting the information at the hearing. Because claimant did not make the required showing, her request to have EAB consider the additional evidence is denied.

Claimant's written argument also contained the assertion that the employer's witness, Sonora, "lied" when she testified that she told claimant to contact the employer's human resources department to inquire about potential Family Medical Leave Act (FMLA) extended leave available to her before claimant submitted her resignation, which claimant denied at hearing. *Compare* Audio Record ~ 24:00 to 25:30; 30:00 to 31:00. However, the record shows that the testimony of the employer's witness was internally consistent, plausible and otherwise credible. Moreover, because claimant admitted she had seen the employer's FMLA poster in the break room and knew that another employee had been allowed to take over four months off work to recover from surgery, more likely than not, claimant was aware that extended medical leave was potentially available to employees. Audio Record ~ 18:00 to 18:45; 41:00 to 41:30. Consequently, we find no reason to doubt the credibility of the employer's witness. Where, as here, the evidence is no more than evenly balanced, we resolve a fact in dispute against the party with

the burden of proof. In a case of voluntary leaving, that burden is on claimant. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). Accordingly, the record shows that claimant's manager advised her to inquire with the employer's human resources department about potential FMLA leave available to her before she submitted her resignation. Because claimant failed to pursue that reasonable alternative to quitting, she voluntarily left work without good cause.

We considered claimant's remaining arguments to the extent they were based on the record.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 14-UI-20375 is affirmed.

DATE of Service: August 11, 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 court.oregon.gov. Once on the website, click on the blue tab for "Materials and Resources." On the next screen, click on the tab that reads "Appellate Case Info." On the next screen, select "Appellate Court Forms" from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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