

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1387-R

Request for Reconsideration Denied

PROCEDURAL HISTORY: On July 3, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 85027). Claimant filed a timely request for hearing. On July 30, 2014, ALJ M. Davis conducted a hearing, and on July 31, 2014 issued Hearing Decision 14-UI-22586, affirming the Department's decision. On August 19, claimant filed an application for review with the Employment Appeals Board (EAB). On August 28, 2014, EAB mailed Appeals Board Decision 2014-EAB-1387 in which it affirmed the Hearing Decision under review.

On September 16, 2014, claimant filed a written argument with EAB. Claimant's written argument will be considered a request to have EAB reconsider Appeals Board Decision 2014-EAB-1387.

We will not address most of the contentions claimant made in his written argument. Most of these arguments were made at the hearing and were, therefore, considered by the ALJ in concluding that claimant resigned to avoid being discharged for misconduct. We agreed with that conclusion in Appeals Board Decision 2014-EAB-1387, and claimant has not shown that we made any error of fact or law that would require us to reconsider our decision under OAR 471-041-0145(1) (October 29, 2006).¹ However, claimant's written argument contains new information regarding the misconduct for which the employer planned to discharge him. The employer intended to discharge claimant for eating protein bars that had been purchased for young people participating in the employer's programs, and not for employees. In his written argument, claimant admitted that he ate the protein bars but explained that he has an eating disorder, which is a type of mental illness. Claimant further asserted that "I have had formal counselling [sic] for this eating disorder and have even had bariatric surgery to control my weight." Although claimant testified at the hearing that he had an eating disorder, he provided no

¹ OAR 471-041-0145(1) provides that a party may request that EAB reconsider a decision "to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule or officially stated Employment Department position, or prior Employment Department practice."

further testimony or evidence regarding the nature and extent of this disorder, or regarding any treatment he has received for the disorder.

EAB may consider information not received into evidence at the hearing unless the party offering the information shows that circumstances beyond the party's control prevented the party from offering the information at the hearing. Claimant provided no reason why he could not have testified or offered other evidence about his eating disorder at the hearing. Accordingly, we deny claimant's request to provide new information and did not consider this information in reaching this decision.

DECISION: Claimant's request for reconsideration is denied. Appeals Board Decision 2014-EAB-1387 remains undisturbed.

Susan Rossiter and Tony Corcoran;
J. S. Cromwell, not participating.

DATE of Service: September 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 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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