

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1539-R

Request for Reconsideration Denied

PROCEDURAL HISTORY: On August 8, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 82037). Claimant filed a timely request for hearing. On September 15, 2014, ALJ Monroe conducted a hearing, and on September 16, 2014 issued Hearing Decision 14-UI-25228, affirming the Department's decision. On September 25, 2014, claimant filed an application for review with the Employment Appeals Board (EAB). On November 7, 2014, EAB issued Appeals Board Decision 2014-EAB-1539, affirming the hearing decision at issue.

At the time Appeals Board Decision 2014-EAB-1539 was issued, the record contained a written argument submitted by claimant on September 25, 2014 that included no statement that claimant had provided a copy of it to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Accordingly, EAB did not consider this written argument. In addition, EAB did not consider claimant's written argument because it contained new information and claimant failed to explain why he did not offer the new information at hearing and did not otherwise show that factors or circumstances beyond his reasonable control prevented him from doing so as required by OAR 471-041-0090(2) (October 29, 2006).

On January 9, 2015, claimant submitted a copy of a September 29, 2014 fax transmission. The September 29 transmission showed that on that date, claimant submitted by fax to EAB a copy of his written argument and a statement that he had provided a copy of the argument to the other parties.

Claimant has demonstrated that he complied with the rule regarding submission of written argument to EAB, and has also shown that EAB's failure to consider his written argument is not attributable to any of his actions. Accordingly, we find it appropriate to exercise our authority under ORS 657.290(3) to reconsider Appeals Board Decision 2014-EAB-1539 and will consider claimant's written argument to the extent that it is relevant and based on the hearing record.

CONCLUSION AND REASONS: Claimant's request for reconsideration is denied.

Under OAR 471-041-0145(1), EAB may reconsider a decision to correct an error of fact or law, or to explain any unexplained inconsistency with a Department rule or practice, or an officially stated Department position. In his request for reconsideration, claimant argued that the ALJ made errors of fact and law in Hearing Decision 14-UI-25228. We disagree, and conclude that the ALJ's findings of fact and conclusions of law are supported by substantial evidence in the record. We will, however, address some of the arguments made by claimant.

In his argument, claimant asserted that the ALJ erred by concluding that he voluntarily left his job; according to the claimant, the employer discharged him. 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, however, the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) and (b) (August 3, 2011).

At hearing, claimant asserted that he no longer wanted to work for the employer after July 7, 2014 because he felt had not been given adequate training for the job he was expected to perform. Transcript at 5. Based on this evidence, the ALJ correctly concluded that claimant was unwilling to continue working for the employer and that he voluntarily left work. Hearing Decision 14-UI-25228 at 4. In his written argument, however, claimant contended that the employer was unwilling to allow him to continue working. According to claimant, on July 7, 2014, his supervisor told him that he "wasn't doing the company any good" by staying, and that claimant should "clock out and turn your stuff in." Written Argument at 1. This evidence regarding these July 7 statements made by claimant's supervisor is new; the hearing record contains no evidence of them. Claimant provided no explanation as to why circumstances beyond his reasonable control prevented him from presenting testimony about these statements at the hearing. Under OAR 471-041-0090, we will not consider this information. Claimant has therefore failed to show that the ALJ's conclusion that he quit his job was erroneous.

Claimant also contended that the ALJ erred by refusing to admit evidence regarding his past experience working for the employer. The record shows, however, that claimant sought to present evidence regarding "what happened before I actually went to work [for the employer]." The ALJ correctly ruled that only testimony relevant to the reasons why claimant voluntarily quit his job would be admitted, and permitted claimant to testify about the circumstances of his hiring. Transcript at 15.

Claimant disputed the ALJ's conclusion that he had the reasonable alternative of continuing to work for the employer to see if, with additional experience and training, he could learn to satisfactorily perform his job duties. Claimant asserted that his supervisor's July 7 statement to him – that he "wasn't doing the company any good" – shows that he had little chance of learning to perform his job to the satisfaction of his supervisor. As discussed above, however, the statement claimant asserted his supervisor made is new evidence which will not be considered because claimant provided no explanation why the evidence was not offered at the hearing.

Because claimant has failed to demonstrate any error of fact or law that requires correction, we will not reconsider Appeals Board Decision 2014-EAB-1539.

DECISION: Reconsideration is denied. Appeals Board Decision 2014-EAB-1539 remains undisturbed.

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

DATE of Service: January 13, 2015

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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