

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1778-R

Request for Reconsideration Dismissed

PROCEDURAL HISTORY: On October 7, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 83332). Claimant filed a timely request for hearing. On November 6, 2014, ALJ Lohr conducted a hearing at which the employer did not appear, and on November 7, 2014 issued Hearing Decision 14-UI-28402, affirming the Department's decision. On November 17, 2014, claimant filed an application for review with the Employment Appeals Board (EAB). On December 31, 2014, EAB issued Appeals Board Decision 2014-EAB-1778, affirming the hearing decision under review. On January 28, 2015, claimant filed a request for reconsideration with EAB.

Under OAR 471-041-0145(1) (October 29, 2006), a party may request reconsideration of an EAB decision to correct an error of material fact or law, or to explain any unexplained inconsistency with Department rule, position or prior practice. A reconsideration request is subject to dismissal unless it is filed within 20 days of the date on which the decision sought to be reconsidered is mailed. Claimant's reconsideration request – filed on January 28, 2014 -- must be dismissed because it was filed more than 20 days from the date on which the EAB decision he asks to be reconsidered was mailed – on December 28, 2014.

Even had we not dismissed claimant's request for reconsideration, we would not have changed the conclusion we reached in Appeals Board Decision 2014-EAB-1779. In his reconsideration request, claimant asserted that EAB erred in refusing to consider the testimony of his union representative regarding his work separation. According to claimant, the refusal to allow his union representative to testify prevented from providing the "most important evidence in my case: that I left my job 'in lieu of termination' that would have occurred on/or about October 1, 2014." Attached to claimant's reconsideration request is a document entitled "Memorandum of Agreement and Separation" dated September 4, 2014, and signed by claimant and representatives of the employer. In this "Memorandum" the parties agree that claimant "is leaving in lieu of termination that would have occurred on/or about October 1st."

Under OAR 471-041-0090 (October 29, 2006), EAB may consider additional evidence if the party offering the evidence shows that it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. Claimant provided no reason why this “Memorandum,” which was clearly relevant and material to his work separation, was not presented at the hearing. For this reason, the “Memorandum” will not be considered. In addition, we note that although claimant testified at length about the reasons for his work separation on September 4, 2014, he provided no testimony about the “Memorandum.” Claimant’s failure to present important evidence that he left his job in lieu of discharge resulted from his decision to conceal the existence of the “Memorandum,” and not from the ALJ’s refusal to allow claimant’s union representative to testify.

DECISION: The request for reconsideration is dismissed. Appeals Board Decision 2014-EAB-1778 remains undisturbed.

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

DATE of Service: February 11, 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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