

**EMPLOYMENT APPEALS BOARD DECISION**  
**2014-EAB-1885-R**

*Request for Reconsideration Denied*

**PROCEDURAL HISTORY:** On October 6, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 74636). The employer filed a timely request for hearing. On November 19, 2014, ALJ Murdock conducted a hearing, and on November 21, 2014 issued Hearing Decision 14-UI-29154, affirming the Department’s decision. On December 11, 2014, the employer filed an application for review with the Employment Appeals Board (EAB). On December 15, 2014, EAB issued Appeals Board Decision 2014-EAB-1885, affirming Hearing Decision 14-UI-29154. On December 16, 2014, the employer responded with a “Corrected Letter of Appeal”. The employer’s letter is treated as a request to have EAB reconsider this decision.

**CONCLUSIONS AND REASONS:** The employer’s request for reconsideration is denied.

OAR 471-041-0145(1) (October 29, 2006), provides, in relevant part, that a party may request reconsideration of an EAB decision “to correct an error of material fact or law.” In its December 16 letter, the employer asserted that the claimant was found sleeping in a recliner chair and that the ALJ “failed to consider the claimant had placed herself in a position to sleep”. However, absent any other evidence in this record, claimant’s choice of a recliner does not, in and of itself, indicate willful misconduct. In addition, the employer asserted that “Once the claimant was awakened (sic), she told management she arrived for work tired.” The employer argued that claimant “had a responsibility to inform the employer if she was unable to perform her duties due to her tiredness.” The employer’s argument is contrary to the facts in the record, however. At the hearing, the employer’s witness testified that claimant told her, when awakened, that she “hadn’t been feeling good.” Audio at ~11:15. Whatever claimant may have told the employer – that she was tired or feeling ill – her statement does not constitute evidence of a willful or wantonly negligent violation of an employer policy requiring an employee to report inability to work due to illness or exhaustion. Accordingly, the employer failed to demonstrate that EAB made any error of fact or law in Appeals Board Decision 2014-EAB-1885 that requires correction.

**DECISION:** The employer's request for reconsideration is denied. Hearing Decision 14-UI-29154 is affirmed. Appeals Board Decision 2014-EAB-1885 remains undisturbed.

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

**DATE of Service: December 16, 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](http://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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