

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1940

Affirmed
Disqualification

PROCEDURAL HISTORY: On November 6, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 101733). Claimant filed a timely request for hearing. On December 9, 2014, ALJ Wipperman conducted a hearing and issued Hearing Decision 14-UI-30074, affirming the Department's decision. On December 24, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument to the extent it was relevant and based on the hearing record. Claimant's argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

Claimant argued that she never received compensation for the performance of service from the employer; therefore her "extremely brief stint" did not constitute "work" as defined in OAR 471-030-0038(6), which defines "work" as "the performance of services for which remuneration, compensation or wages is intended to be received or earned." Written Argument at pages 3 and 4. However, on December 2, 2014, claimant submitted a copy of an April 24, 2014 "Payroll Detail Report" to the Office of Administrative Hearings. The ALJ declined to admit the document as an exhibit in the hearing

because claimant had not provided a copy to the employer prior to the hearing.¹ EAB admits claimant's April 24, 2014 "Payroll Detail Report" as EAB Exhibit 1.²

There is a handwritten note by claimant on EAB Exhibit 1 describing the document as "FIRST + LAST CHK. – WORKED THREE DAYS – QUIT. (dated) 4/24/14" and signed by claimant. While there was some discussion at the end of the hearing regarding the employer's observation that the check had not yet cleared as of the hearing on December 9, 2014, the employer clearly requested claimant's current address to send a replacement check if needed. Thus claimant's argument that "Claimant and the Employer agreed that she would receive no remuneration or compensation for her services"³ is refuted by the employer's testimony, and EAB Exhibit 1, that it compensated or intended to compensate claimant for 23.75 hours at \$9.10 an hour for a gross total of \$216.12, with a net total of \$199.22 after deductions. EAB Exhibit 1. The fact that claimant may not have pursued her compensation does not mean it was not available as remuneration for work performed.

Claimant also argued that, in the alternative, assuming claimant's 23.75 hour "stint" with the employer constitutes "work" as defined in OAR 471-030-0038(6), "it is understandable that a brand new and intimidated employee would have difficulty confronting their (sic) employer about work conditions on the third or fourth day of work." Written Argument at page 4. We disagree. As the ALJ indicated, claimant had the reasonable alternatives of addressing her concerns regarding training and the expected pace of cleaning assignments with her employer prior to her resignation.⁴

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-30074 is affirmed.

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

DATE of Service: January 14, 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

¹ Audio Recording at ~5. Also, page 1 of Hearing Decision 14-UI-30074.

² Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the document will remain in the record at EAB Exhibit 1.

³ Written Argument at page 4 and 5.

⁴ Page 2 of Hearing Decision 14-UI-30074.

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