

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1218-R

Request for Reconsideration Denied

PROCEDURAL HISTORY: On May 28, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 103519). The employer filed a timely request for hearing. On June 30, 2014, ALJ Triana conducted a hearing, and on July 3, 2014, issued Hearing Decision 14-UI-20903, concluding claimant voluntarily left work without good cause. On July 14, 2014, claimant filed an application for review with the Employment Appeals Board (EAB). On July 31, 2014, EAB issued Appeals Board decision 2014-EAB-1218, affirming Hearing Decision 14-UI-20903.

On August 12, 2014, claimant filed a written argument with EAB. The written argument is treated as a request to reconsider Appeals Board decision 2014-EAB-1218.

CONCLUSIONS AND REASONS: Claimant request for reconsideration is denied.

OAR 471-041-0145(1) (October 29, 2006) provides that a party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with an Employment Department rule, position or prior practice.

Claimant submitted a written argument to EAB in which he contended, in essence, that he had good cause to voluntarily leave work to accept a contingent offer of a new job with better wages and working conditions. OAR 471-030-0038(5)(a) (August 3, 2011) states that, when a claimant leaves work to accept an offer of other work, good cause for leaving exists only if, among other things, the offer is "definite." This requirement of definiteness is not nuanced, and the plain language of the regulation requires that the offer must be definite in its objective terms. The Department's Benefits Manual states that a job offer is not definite within the meaning of OAR 471-030-0039(5)(a) if it is "contingent on anything." Benefits Manual (rev. April 2, 2013), Ch. 400 §422(B). EAB has consistently applied the Department's strict definition in determining whether a job offer is definite. *See e.g. Elijah J. Deruiter-Sechrist* (Employment Appeals Board, 2014-EAB-0320, March 20, 2013). While claimant might have

reasonably thought that, based on the particular circumstances before him, all contingencies to the offer had been satisfied at the time that he accepted that offer and quit work, by its terms the offer of the new job remained subject to the new employer receiving acceptable results from a drug test. Claimant does not refute the findings of fact in Hearing Decision 14-UI-20903 that he was offered work with Cornerstone Transport (new employer) on April 25, 2014, and that the new employer told him he could start training on April 29, 2014. Nor does claimant refute the findings of fact in Hearing Decision 14-UI-20903 that the new employer required claimant to take a drug test prior to starting work and, had he not passed the drug screen, he would not have been allowed to begin training. Claimant also does not refute the fact that he resigned from Marten Transport LTD on April 25, 2014 and that he took the drug test on April 28, 2014. While claimant may have been confident that he would pass the drug test, it was still a condition of his new employment. Claimant did not take the drug test until after he resigned from Marten Transport LTD. As indicated by the ALJ in Hearing Decision 14-UI-20903: “Therefore, the offer of new work was not a definite offer, as it was contingent on claimant passing the drug screen.” Page 3.

Because the offer of new work was subject to a stated contingency, we agree with the ALJ that it was not definite and that, applying OAR 471-030-0038(5)(a), the only conclusion that can be drawn is that claimant voluntarily left work without good cause.

We find no error of fact or law in the ALJ’s findings of fact and conclusions of law and, in accordance with OAR 471-041-0145(1), deny claimant’s request for reconsideration.

DECISION: Claimant’s request for reconsideration is denied. Appeals Board Decision 2014-EAB-1218 remains undisturbed.

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

DATE of Service: August 21, 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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