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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1260-R

Request for Reconsideration Denied

PROCEDURAL HISTORY: On June 17, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 104837). Claimant filed a timely request for hearing. On July 11, 2014, ALJ Wyatt conducted a hearing, and on July 18, 2014, issued Hearing Decision 14-UI-21841, affirming the Department's decision. On July 23, 2014, claimant filed an application for review with the Employment Appeals Board (EAB). On July 31, 2014, EAB issued Appeals Board decision 2014-EAB-1260, affirming Hearing Decision 14-UI-21841.

On July 31, 2014, claimant filed a written argument with EA B. The written argument is treated as a request to reconsider Appeals Board decision 2014-EAB-1260.

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. In her written argument, claimant asserted that because her workload as a registered nurse at the Multnomah County jail was overwhelming and her work environment chaotic and disorganized, she had "constant panic attacks," nightmares, and flare ups of her arthritis. Claimant contends that because of these problems, she was unable to successfully perform her job and made errors in dispensing medication. Claimant asserts that she chose to resign due to the physical and emotional effects of her job, and her fear of exposing patients to the risk of inadequate care. According to claimant, she asked her supervisor and the employer's human resources division for a lighter workload or a transfer to another position, but never received a satisfactory response.

The issues raised by claimant in her written argument were also raised at the hearing and addressed by the ALJ in Hearing Decision 14-UI-21841. The ALJ found that claimant suffered from physical or mental impairments. In accordance with OAR 471-030-0038(4), the ALJ then determined whether claimant had good cause for quitting her job by deciding whether claimant's reason for leaving work

was of such gravity that a reasonable and prudent person, with the characteristics and qualities of a person with claimant's disabilities, had no reasonable alternative but to leave work. The ALJ concluded that while claimant may have faced a grave situation in the workplace, she had a reasonable alternative to quitting. According to the ALJ, claimant could have made the employer aware of her impairments and requested accommodation under the Americans With Disabilities Act (ADA). Because claimant failed to pursue this alternative, the ALJ concluded that claimant did not establish good cause for voluntarily leaving work. 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.

Included with claimant's written argument was evidence not presented at the hearing -- a letter from a doctor in which the doctor noted that claimant "has been treated for depression and anxiety at Kaiser Permanente" and explained that claimant's work with the employer worsened claimant's anxiety "to the point of not being able to sleep, had nightmares, and experienced panic attacks. She also had a bad flare up of her arthritis." Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information only if the party presenting the information shows that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. Because claimant provided no reason why she was unable to present the doctor's letter at the hearing, we did not consider it in reaching this decision.ⁱ

DECISION: Claimant's request for reconsideration is denied. Appeals Board Decision 2014-EAB-1260 remains undisturbed.

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

DATE of Service: August 14, 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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ⁱ In her written argument, claimant states that her supervisor asked her to resign, and told her that the employer was "going to continue with the termination of your [claimant's] employment." At the hearing, claimant presented no testimony regarding these conversations. In addition, claimant never disputed the testimony of the employer's representative that the employer had no plans to discharge claimant. (Audio ~ 24:05). Because claimant provided no reason why she did not offer this new information at the hearing, we did not consider it in reaching this decision. OAR 471-041-0090.