

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0045-R

Request for Reconsideration Dismissed

PROCEDURAL HISTORY: On December 3, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 105756). Claimant filed a timely request for hearing. On January 8, 2015, ALJ Frank conducted a hearing, and on January 9, 2015 issued Hearing Decision 15-UI-31624, affirming the Department's decision. On January 20, 2015, claimant filed an application for review with the Employment Appeals Board (EAB). On January 26, 2015, EAB issued Employment Appeals Board Decision 2015-EAB-0045-R, affirming Hearing Decision 15-UI-31624. On January 29, 2015, claimant filed correspondence with EAB that was construed as a request for reconsideration. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

OAR 471-041-0125 (October 29, 2006) provides:

- (1) Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice.
- (2) The request is subject to dismissal unless it:
 - (a) Includes a statement that a copy has been provided to the other parties. Example: "I certify that on I mailed by first class mail a copy of this document to the opposing party, addressed as follows: ABC Company, 123 Main St., Portland, OR, 9XXXX."
 - (b) Is filed on or before the 20th day after the decision sought to be reconsidered is mailed.

Claimant's correspondence was filed on time and alleged EAB made errors of material fact. However, claimant did *not* include a statement with her request that she provided a copy of her request to the other parties to this case. Therefore, her request for reconsideration must be dismissed under the applicable rule.

Even if claimant's request had complied with the rules set forth for review of reconsiderations, our decision as to claimant's disqualification from benefits would remain the same. Claimant argued that EAB erred in failing to consider her written argument when reaching the original decision in this matter,

stating, "I want it on record that everyone in fact had the information and I was still not given the consideration." To clarify, the only information EAB did not consider when reaching its original decision was the content of claimant's written argument. EAB considered the hearing record, which included record documents, testimony and exhibits, including the exhibit claimant submitted. EAB did not consider claimant's argument because OAR 471-041-0080 provides, in pertinent part:

- (2) A party's written argument will not be considered unless it:
 - (a) Includes a statement that a copy has been provided to the other parties. Example: "I certify that on I mailed by first class mail a copy of this document to the opposing party, addressed as follows: ABC Company, 123 Main St., Portland, OR, 9XXXX."

Thus, the rule does not require that everyone have the information claimant submitted, but, rather, that claimant provide a copy of the document itself to the parties *and* notify EAB that she had done so. On this record, claimant did not follow either step, and EAB did not err by excluding her argument from consideration when reaching its original decision in this matter.

Claimant also asserted that EAB erred in concluding that claimant voluntarily left work, because "in fact I was the one contacted by my employer and told my position was being eliminated." There is no dispute, and the hearing decision EAB adopted stated as a finding of fact, as follows:

On September 26, 2014, at 11:27 AM, the employer sent an e-mail message to claimant. In this message, the employer specified that in order to continue working, claimant would need to resume commuting to the office and work a minimum of three days per week, as the "work from home only" position would be eliminated effective October 10, 2014.

The ALJ also found as fact that claimant received the message, chose not to reply to it for several days, and made only minimal efforts to contact the message's sender when her initial attempt failed. It is clear from the record that the employer was eliminating the work-from-home position claimant held, but equally clear that the employer was not severing the employment relationship, but offering claimant continuing work, albeit on different terms.

OAR 471-030-0038(2)(a) provides that a voluntary leaving occurs if "the employer could have continued to work for the same employer for an additional period of time." That rule also defines "work" to mean "the continuing relationship between an employer and an employee," without respect to any particular position the employee held. OAR 471-030-0038(1)(a). Because the preponderance of the evidence is that the employer's September 26th email eliminated claimant's work-from-home *position*, but also set forth conditions for a *continuing relationship*, the employer's elimination of claimant's position did not equate to a discharge. Because claimant could have continued to work for the employer for an additional period of time by making minimal efforts to, as stated in Hearing Decision 15-UI-31624, reply to the September 26th email, accept the offered position, and report to the office either to discuss matters with the email's sender or report for work on October 10th, the work separation was, under Oregon Employment Law, a voluntary leaving, and EAB did not err in so concluding.

For the foregoing reasons, claimant's request for reconsideration is dismissed. However, even if it had not been, had EAB reconsidered its decision in this matter, the outcome would remain the same for the reasons explained herein and in Hearing Decision 15-UI-31624.

DECISION: Claimant’s request for reconsideration is dismissed. Hearing Decision 15-UI-31624 is undisturbed.

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

DATE of Service: January 30, 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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