

**EMPLOYMENT APPEALS BOARD DECISION**

**2015-EAB-0140**

*Affirmed  
Disqualification*

**PROCEDURAL HISTORY:** On October 28, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was disqualified from receiving unemployment insurance benefits (decision # 93317). Claimant filed a timely request for hearing. On November 26, 2014, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for 3:30 p.m. on December 11, 2014. On December 11, 2014, ALJ Wipperman conducted a hearing in which the employer did not participate, and on December 12, 2014, issued Hearing Decision 14-UI-30358, concluding that claimant was not disqualified from receiving unemployment insurance benefits. On December 18, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

On December 29, 2014, the EAB issued 2014-EAB-1915, reversing and remanding Hearing Decision 14-UI-30358 under ORS 657.275(1) for a new hearing and hearing decision based upon the record of the proceeding before the OAH. On January 22, 2015, ALJ Shoemake conducted a hearing, and on January 26, 2015 issued Hearing Decision 15-UI-32305, affirming the Department's October 28, 2014 decision which concluded that claimant was disqualified from receiving unemployment insurance benefits. On February 11, 2015, claimant filed an application for review with the EAB.

Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision. Even if we had considered claimant's arguments, the results would be the same. With respect to claimant's assertion that the manager discharged him because of the manager's grudge against him, the allegation is immaterial. Regardless whether claimant's assertion about the manager's alleged bias was correct, claimant did not dispute that he smelled of alcohol at the time the manager and another employee encountered him on his final day of work, he disputed only the cause of the smell, arguing that he smelled of medications he took for a medical issue rather than alcohol due to drunkenness. Claimant argued emphatically that he was not drunk at work on October 2, 2014. However, he was not discharged because he was drunk, he was discharged because he refused to undergo drug and alcohol testing under the employer's reasonable written policy when the employer

objectively had reasonable suspicion to subject him to testing. Claimant did not dispute he refused the test, the employer's policy says refusing a reasonable suspicion test results in discharge, and claimant's discharge for refusing to undergo drug testing was a disqualifying act under Employment Department law.

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 15-UI-32305 is affirmed.

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

**DATE of Service:** **February 19, 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](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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