

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0161

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 15, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 121809). The employer filed a timely request for hearing. On January 28, 2015, ALJ Frank conducted a hearing, and on January 30, 2015 issued Hearing Decision 15-UI-32649, affirming the Department’s decision. On February 18, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the employer’s written argument to the extent it was relevant and based on the hearing record. In the hearing and in its written argument the employer argued that continuing work was available at the time of discharge because the employer made an “offer to discuss retention options”. However, claimant testified that he was unaware that the employer would offer continuing work at the time of separation. Audio at ~ 25:10. The employer did not refute claimant’s testimony when given the opportunity to do so during the hearing. The testimony was equally balanced on this point; thus the employer did not meet its burden of proof in a discharge case.

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-32649 is affirmed.

Susan Rossiter and Tony Corcoran;
J. S. Cromwell, 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. 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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