

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0844-R**

*Appeals Board Decision 2015-EAB-0844 Adhered to on Reconsideration  
No Disqualification*

**PROCEDURAL HISTORY:** On April 8, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a false statement or misrepresentation to obtain benefits and disqualifying claimant from four weeks of future benefits (decision #201676). Claimant filed a timely request for hearing. On May 26, 2015, ALJ Vincent conducted a hearing, and on June 26, 2015, issued Hearing Decision 15-UI-49785, reversing the administrative decision and concluding that claimant was not disqualified from future benefits. On July 13, 2015, the employer filed an application for review with the Employment Appeals Board (EAB). On July 15, 2015, EAB issued Appeals Board Decision 2015-EAB-0944, affirming Hearing Decision 15-UI-49785. On July 31, 2015, the employer filed a written argument with EAB. Under the discretion granted us by ORS 657.290(3), we will reconsider Appeals Board Decision 2015-EAB-0656 to address an issue raised in the employer's argument.

In Hearing Decision 15-UI-49785, the ALJ held that claimant did not willfully misrepresent to the Department that he was laid off from his job with the employer. The ALJ based his conclusion on what occurred at an October 13, 2014 meeting. On that date, claimant and two supervisors met and discussed claimant's return to work after a leave of absence. Claimant testified that his supervisors told him they would re-assess the situation in 30 days; claimant understood this to mean that the employer had decided to postpone his work separation because the employer had other employees doing claimant's work. Hearing Decision 15-UI-49785 at 5. The ALJ concluded that claimant did not falsely describe his work separation as a layoff due to lack of work because, based on the October 13 meeting, claimant believed the employer had made a decision "to stop providing him with work because other employees were performing his job and they [sic] had no other work available for him." *Id.* In its written argument, the

employer asserted that claimant could not reasonably have believed that the employer agreed to postpone his work separation at the October 13 meeting. The employer contended that claimant must have realized that at that meeting, the employer was discharging him for excessive absenteeism because his supervisors directed claimant to remove his tools and personal belongings.

The employer's assertion that claimant was ordered to remove his tools on October 13 is new evidence which was not presented at the hearing. Under OAR 471-041-0090 (October 26, 2009), EAB may consider new information if the party presenting the new information demonstrates that circumstances beyond its reasonable control prevented it from offering the information at the hearing. The employer did not demonstrate any reason why it failed to provide the information it now wants EAB to consider at the May 26, 2015 hearing. For this reason, EAB will not consider this evidence.

On reconsideration, EAB may make a new decision "to the extent necessary and appropriate for the correction of previous error of fact or law." ORS 657.290(3). We conclude that we made no error of fact or law in our original decision and therefore adhere to it.

**DECISION:** Reconsideration is granted. We adhere to Appeals Board Decision 2015-EAB-0844 as clarified herein.

Susan Rossiter and J. S. Cromwell;  
D. P. Hettle, *pro tempore*, not participating.

**DATE of Service:** August 4, 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 Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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