

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0879-R

Request for Reconsideration Dismissed
Employment Appeals Board Decision 2015-EAB-0879 Remains Undisturbed

PROCEDURAL HISTORY: On June 15, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 72640). The employer filed a timely request for hearing. On July 13, 2015, ALJ Triana conducted a hearing, and on July 16, 2015 issued Hearing Decision 15-UI-41616, affirming the Department's decision. On July 21, 2015, the employer filed an application for review with the Employment Appeals Board (EAB). On July 28, 2015, EAB issued Employment Appeals Board Decision 2015-EAB-0879, affirming Hearing Decision 15-UI-41616. On August 5, 2015, the employer filed a request for reconsideration and supporting written argument.

OAR 471-041-0145 (October 29, 2006) allows parties to request reconsideration of an EAB decision to, among other things, "correct an error of material fact or law." A party's request for reconsideration is subject to dismissal unless it "[i]ncludes a statement that a copy has been provided to the other parties." OAR 471-041-0145(2)(a). The employer did not include any such statement in its request. Its request therefore is dismissed.

Even if EAB allowed the employer's request for reconsideration, or reconsidered its decision under ORS 657.290(3) to address the employer's submission of written argument, the outcome would remain the same. First, the employer did not assert or show that Employment Appeals Board Decision 2015-EAB-0879 contains an error of material fact or law. The employer instead confirmed that EAB correctly adopted the ALJ's findings that claimant's workers compensation was closed on April 15, 2015 and that claimant notified the employer in late May 2015 that she was available for work, and asserted only that claimant showed "no accountability." Second, the employer failed to certify that it provided a copy of its written argument to claimant as required by OAR 471-041-0080(2)(a) (October 29, 2006). EAB therefore would not have considered the employer's argument, and would have affirmed Employment Appeals Board Decision 2015-EAB-0879 on reconsideration.

DECISION: The request for reconsideration filed August 5, 2015 is dismissed. Employment Appeals Board Decision 2015-EAB-0879 remains undisturbed.

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

DATE of Service: August 7, 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. 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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