

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1301

Affirmed
Disqualification

PROCEDURAL HISTORY: On September 23, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 74913). Claimant filed a timely request for hearing. On October 20, 2015, ALJ Triana conducted a hearing, and on October 26, 2015 issued Hearing Decision 15-UI-46529, affirming the Department's decision. On November 4, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's argument contained information that was not part of the hearing record, including new information about his expenses¹, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we did not consider claimant's new information when reaching this decision. Claimant also argued that he should not be disqualified from benefits because he did not make the prevailing rate of pay while working in San Jose. However, the prevailing rate of pay rule claimant cited, OAR 471-030-0037, does not apply to claimant's case. That rule only clarifies what the term "suitable work" means for purposes of applying ORS 657.176(2)(d), which is when an individual fails without good cause to apply for suitable work when referred by the Department, or ORS 657.176(2)(e), which is when an individual fails without good cause to accept suitable work when offered. Claimant's case involved a voluntary leaving under ORS 657.176(2)(c), so

¹ Claimant's argument that the ALJ's finding that he spent \$80 to \$100 per month on food is well-taken. Although the ALJ's finding was based on claimant's testimony during the hearing, it is unrealistic to conclude that amount was sufficient to supply claimant with food and personal items. However, the discrepancy did not affect the outcome of this decision. The ALJ determined based upon the record evidence that claimant had approximately \$1,632 per month left after his monthly costs from living in California were deducted from his estimated net pay. Hearing Decision 15-UI-46529 at 2. Even if the cost of claimant's monthly food and personal item bill was, as claimant estimated in his argument, \$600 instead of \$80 to \$100, the hearing record shows that would still have left claimant with over \$1,000 per month after his expenses were deducted from his estimated net pay. Therefore, even if we admitted claimant's new information about the food costs and factored the increased cost for food into our findings, we would still agree with the ALJ's ultimate conclusion that claimant's expenses did not exceed his income, that he did not face a grave situation when he left work, and that his voluntary leaving was without good cause.

the provisions claimant cited do not apply to his case. EAB considered claimant's remaining arguments when reaching this decision to the extent the arguments were relevant and based on the hearing record.

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-46529 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: November 10, 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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