

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0209-R

Reconsideration Granted
Appeals Board Decision 2016-EAB-0209 Adhered to on Reconsideration

PROCEDURAL HISTORY: On January 20, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 74054). Claimant filed a timely request for hearing. On February 16, 2016, ALJ Seideman conducted a hearing, and on February 19, 2016 issued Hearing Decision 16-UI-53375, affirming the Department's decision. On February 23, 2016, claimant filed an application for review with the Employment Appeals Board (EAB). On March 11, 2016, EAB issued Appeals Board Decision 2016-EAB-0209 in which it affirmed the hearing decision under review. On March 14, 2016, EAB received claimant's written argument. EAB will exercise its authority under ORS 657.290(3) to reconsider Appeals Board Decision 2016-EAB-0209 and address some of the issues raised in claimant's written argument.

CONCLUSION AND REASONS: Claimant's request for reconsideration is granted. We adhere to Appeals Board Decision 2016-EAB-0209.

In Appeals Board Decision 2016-EAB-0209, we agreed with the ALJ's conclusion that by taking items from the employer's store, claimant committed acts which were a willful disregard of the employer's expectations and constituted misconduct. This conclusion was based on claimant's June 2, 2015 oral statement to an employer representative, her June 3, 2015 written statement to the employer, and a June 25, 2015 agreement in which claimant promised to reimburse the employer for the cost of the items she had taken. Appeals Board Decision 2016-EAB-0209 at 2. In her written argument, claimant asserted that these statements were unreliable because they were made when "I was not in my normal frame of mind as I was experiencing dilusional [sic] thoughts during a psycotic [sic] breakdown." Written Argument at 1. In regard to the June 3 written statement, in which claimant stated that some of the items she took from the store may have been taken by her son and an individual staying with claimant in her home, that "I do not believe I would ever write such a statement regarding my son." Written Argument at 2.

Based on the consistency and detailed nature of the oral and written statements claimant provided to the employer, as well as her agreement to reimburse the employer for merchandise she had taken, we correctly determined in Appeals Board Decision 2015-EAB-0209 that claimant's statements about items merchandise she took from the store were reliable, and not the product of any impaired thought processes. We also find no reason to re-examine our conclusion that it is improbable that the employer fabricated the June 3 written statement claimant asserted she did not make. The statement mentions claimant's house guest by name; it is highly unlikely that the employer would have known the identity of this individual unless claimant had mentioned it.

Claimant also contended in her written argument that the employer discharged her because she took a leave of absence under the Family Medical Leave Act (FMLA), and that her discharge therefore constituted "discrimination of my disability and the time wrongful termination." Written Argument at 2. Contrary to claimant's assertion, we find no evidence in the record that claimant's medical conditions played any part in the employer's decision to discharge her.

The remaining issues raised in claimant's written argument are fully addressed in Appeals Board Decision 2016-EAB-0209. We therefore find no error of fact or law in this decision that would require correction on reconsideration. *See* ORS 657.290(3) (reconsideration by EAB may include making a new decision "to the extent necessary and appropriate for the correction of a previous error of fact or law.")

DECISION: Reconsideration is granted. Hearing Decision 16-UI-53375 is adhered to on reconsideration.

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

DATE of Service: March 16, 2016

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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