

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0792-R

Reconsideration Granted
Appeals Board Decision 2016-EAB-0792 Adhered to on Reconsideration

PROCEDURAL HISTORY: On May 18, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 152724). Claimant filed a timely request for hearing. On June 14, 2016, ALJ S. Lee conducted a hearing in which she utilized the services of a Haitian Creole interpreter, and on June 22, 2016, issued Hearing Decision 16-UI-62372, affirming the Department's decision. On July 6, 2016, claimant filed an application for review with the Employment Appeals Board (EAB). On August 5, 2016, EAB issued Appeals Board Decision 2016-EAB-0792, affirming Hearing Decision 16-UI-62372.

On August 15, 2016, claimant submitted a letter to EAB and additional evidence. In his letter, claimant stated that he wanted "to file an appeal about the decision of the employment appeal board." EAB will exercise its discretion under OAR 657.290(3) reconsider its decision and address some of the issues raised in claimant's submission.

EVIDENTIARY MATTERS: In his submission to EAB, claimant included copies of medical records, and information and materials concerning a worker's compensation claim and wage and discrimination claims he filed with the Oregon Bureau of Labor and Industries (BOLI). None of these materials were offered into evidence at the June 14 hearing. EAB may consider new information not received into evidence at the hearing if the information is material and relevant to EAB's determination, and the party presenting the information demonstrates that circumstances beyond the party's reasonable control prevented the party from presenting the information at the hearing. OAR 471-0041-090(1) and (2) (October 29, 2006). Claimant failed to demonstrate that the information he wants EAB to consider is material or relevant to our determination. Even if we assume the information claimant has submitted is relevant to the issue of his qualifications for unemployment benefits, claimant failed to show any

circumstances beyond his reasonable control that prevented him from offering the information into evidence at the hearing. Claimant's request to have EAB consider new information is therefore denied.¹

CONCLUSION AND REASONS: Claimant's request for reconsideration is granted. We adhere to Appeals Board Decision 2016-EAB-0792.

In Appeals Board Decision 2016-EAB-0792, we concluded that claimant, who sustained a work-related injury with one employer in November 2015, failed to demonstrate good cause for voluntarily leaving work for another employer, Graziano, on February 26, 2016. We found that claimant failed to meet his burden to demonstrate that Graziano was unable or unwilling to provide him with modified work that complied with the restrictions imposed by claimant's physician.

In his August 2016 letter to EAB, claimant stated that on February 26, 2016, he apparently believed that he was on a leave of absence from his employer because of his November 2015 injury and only found out that "my employment was terminated on June 22, 2016." Claimant, whose native language is Haitian Creole and who does not speak English well, and is completely unable to read or write English, also indicated that the employer's failure to provide him with an interpreter may have resulted in confusion and misunderstanding about his employment status.

We do not find credible claimant's assertion that he believed he was on some type of extended leave from the employer and only learned of his work separation on June 22, 2016, the date on which the hearing decision was issued. The May 18, 2016 administrative decision (decision # 152724) which claimant received stated as a "Legal Conclusion" that claimant voluntarily left work on February 26, 2016. The decision also stated that "[i]f you do not understand this decision, contact the Unemployment Insurance Center above immediately." Although claimant may have been unable to read and understand this decision, he apparently had access to someone who was able to interpret for him -- his request for a hearing, which included an argument as to why he disagreed with the decision, was written in English. We also note that at the hearing, at which claimant was provided the services of a Haitian Creole interpreter, the employer's witness repeatedly testified that claimant quit his job in February 2016. *See*, Transcript at 14, 15, 18 and 19. Claimant expressed no disagreement with these statements or indicated any surprise that the employer considered February 26 as the date of his work separation.

In regard to any confusion that may have occurred because the employer did not provide claimant with an interpreter during the February 26 meeting at which claimant resigned, the record shows that claimant never asked for an interpreter during this meeting² and apparently did not believe that one was necessary. When the ALJ asked him if he ever asked for an interpreter during his employment with Graziano, claimant testified that he initially had used a coworker to interpret, but subsequently decided an interpreter was no longer needed -- "I didn't need an interpreter then." Transcript at 27. The evidence in the record therefore fails to demonstrate that the employer's failure to offer claimant an interpreter

¹ In the materials claimant submitted to EAB, claimant seemed to indicate some confusion regarding his worker's compensation claim and the wage and discrimination claims he filed with BOLI. We urge claimant to contact the attorney who represented him in his worker's compensation claim and BOLI if he has questions or concerns about these matters.

² Transcript at 20.

may have caused him to misunderstand his employment status during his February 26 meeting with the employer.

We next address claimant's contention that his employment was "terminated." If an employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (August 3, 2011). If an employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). At the hearing, claimant testified that he told Graziano that he did not want to continue working there because of his pending worker's compensation claim with his other employer. Transcript at 27. Because the evidence in the record shows that claimant was unwilling to continue working for the employer, his work separation was a voluntary leaving and not a discharge. EAB did not err in reaching this conclusion in Appeals Board Decision 2016-EAB-0792.

Because we find no error of fact or law that requires correction, we adhere to our original decision in Appeals Board Decision 2016-EAB-0792. *See* ORS 657.290(3) (reconsideration by EAB may include issuing 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-62372 is adhered to on reconsideration.

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

DATE of Service: August 17, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.