

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0920

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 23, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 81800). The Department mailed notice of decision # 81800 to claimant at her last known address of record, 17009 SW 130TH PL, KING CITY OR 97224-2587. Claimant filed a timely request for hearing. On June 16, 2016, ALJ S. Lee conducted a hearing, and on June 24, 2016 issued Hearing Decision 16-UI-62571, affirming the Department's decision. On June 24, 2016, the Office of Administrative Hearings (OAH) mailed notice of Hearing Decision 16-UI-62571 to claimant at the following address: 17009 SW 130th Pl, PORTLAND OR 97224. On July 26, 2016, OAH mailed notice of Hearing Decision 16-UI-62571 to the King City address. On August 5, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

The first issue before EAB is whether claimant filed a timely application for review of Hearing Decision 16-UI-62571. ORS 657.270(4)(b) provides that the ALJ shall promptly notify all parties of the ALJ's decision. OAR 471-040-0030 (August 1, 2004) states that the ALJ shall promptly prepare and serve a written decision after the conclusion of the hearing, and that copies of the ALJ's decision shall be personally delivered or mailed to the parties, or their authorized agents, at their "last address of record." ORS 657.270(6) provides that the ALJ's decision is final unless a party files an application for review within 20 days after the notice was mailed to the party's "last-known address." ORS 657.275(1) provides that if a party files a timely application for review of the ALJ's decision, EAB shall promptly affirm, modify or set aside the hearing decision. OAR 471-041-0070 (March 20, 2012) states that an application for review is timely if it is filed within 20 days of the date OAH mailed the decision, and that the filing period may be extended only upon a showing of good cause.

In the present case, claimant filed her application for review more than 20 days after ALJ issued, and OAH first mailed, notice of Hearing Decision 16-UI-62571 to her on June 24, 2016. However, OAH did not mail notice of the decision to claimant's last-known address of record until July 26, 2016. Claimant filed her application for review within 20 days after OAH mailed notice of the decision to that

address. Claimant therefore filed a timely application for review of Hearing Decision 16-UI-62571, and is entitled to a review of that decision by EAB.

In Hearing Decision 16-UI-62571, the ALJ found that claimant quit working for the employer because she was demoted and her pay reduced for violating the employer's instruction not to discuss her own medical information with any employee outside human resources.¹ The ALJ concluded that the demotion and resulting pay reduction did not constitute good cause for quitting work, despite claimant's "feelings that she was being targeted by human resources" and "not agreeing with the employer's decision."² In written argument, as at hearing, claimant alleged that the demotion and pay reduction were acts of harassment and retaliation by the employer's human resources manager for complaints claimant made against the employer's collections manager. However, claimant failed to certify that she provided a copy of her written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained some new information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented her from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

At hearing, it was undisputed that the employer instructed claimant not to discuss her own medication information with any employee outside of human resources. It also was undisputed that, a few days later, claimant discussed her own medical information with her supervisor, who was not the employer's collections manager, human resources manager or a human resources employee. At hearing, claimant's supervisor testified that it was his decision, and not that of the human resources or collection managers, to demote claimant and reduce her pay for disclosing that information to him. Audio Record at 45:15-46:40, 59:00-59:45, 1:03:00-1:05:45, 1:07:30-1:08:00. The supervisor's testimony was corroborated by a document he presented to claimant at the time of her demotion, in which he stated that the demotion and pay reduction were for disclosing the medication information to him. Exhibit 1 at 3-4. Claimant's assertion that the demotion and pay reduction were acts of harassment and retaliation by the human resources manager for complaints made against the collections manager is not supported by a preponderance of evidence in the record. We therefore agree with the ALJ that the demotion and pay reduction did not constitute good cause for quitting work, claimant's disagreement with the employer's decision and her feelings that she was being targeted by human resources notwithstanding.

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 16-UI-62571 is affirmed.

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

DATE of Service: September 7, 2016

¹ Hearing Decision 16-UI-62571 at 1-2.

² *Id.* at 4.

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.