

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1272

Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 13, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer suspended claimant, not for misconduct (decision # 100223). The employer filed a timely request for hearing. On October 12, 2016, the Office of Administrative Hearings (OAH) served notice of a hearing on whether claimant shall be disqualified from receiving benefits for a suspension. On October 25, 2016, ALJ L. Lee conducted a hearing on whether claimant's suspension was for misconduct, and issued Hearing Decision 16-UI-69856, affirming the Department's decision. On November 14, 2016, the employer filed an application for review of Hearing Decision 16-UI-69856 with the Employment Appeals Board (EAB).

EAB reviewed the entire hearing record and the employer's written argument, in which it argued that quit work for personal reasons after she was suspended. As noted above, however, decision # 100223 concluded the employer suspended claimant, not for misconduct, and did not address a subsequent work separation. The October 12, 2016 notice of hearing stated that the issue to be considered was whether claimant shall be disqualified from receiving benefits for a suspension, and not whether she shall be disqualified from receiving benefits for a subsequent work separation. At hearing, the employer did not ask the ALJ to assume jurisdiction over the latter issue, and claimant did not waive notice on that issue. Hearing Decision 16-UI-69856 addressed only whether claimant's suspension was for misconduct, and not whether she is disqualified from receiving benefits based on a subsequent work separation. Thus, the only issue over which EAB has jurisdiction is whether claimant's suspension was for misconduct, and not the latter issue.

On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 16-UI-69856 is affirmed.

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

DATE of Service: November 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.

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