

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0080-R

Reconsideration Granted
Appeals Board Decision 2017-EAB-0080 Adhered to on Reconsideration

PROCEDURAL HISTORY: On December 7, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for committing a disqualifying act (decision # 64408). Claimant filed a timely request for hearing. On January 10, 2017, ALJ Holmes-Swanson conducted a hearing, and on January 11, 2017 issued Hearing Decision 17-UI-74467, affirming the Department's decision. On January 19, 2017, claimant filed an application for review with the Employment Appeals Board (EAB). On February 10, 2017, EAB issued Appeals Board Decision 2017-EAB-0080, affirming the hearing decision under review. On February 10, 2017, EAB received a written argument from claimant. EAB will exercise its discretion under ORS 657.290(3) to reconsider Appeals Board Decision 2017-EAB-0080 and address issues raised in claimant's written argument.

In his written argument, claimant included a copy of the employer's drug and alcohol policy, and argued that the employer violated this policy when it discharged him. Claimant did not offer the drug and alcohol policy into evidence at the hearing. Also in his written argument, claimant presented information about the circumstances that resulted in his discharge that was not provided at the hearing. Under OAR 471-041-0090(2), EAB may consider new information not offered at the hearing if the party presenting the information demonstrates that circumstances beyond its reasonable control prevented the party from offering the information at the hearing. Because claimant provided no reason why he did not offer the information he now wants EAB to consider at the hearing, his request to have EAB consider new information is denied.

Because claimant has not demonstrated any error of fact or law in Appeals Board Decision 2017-EAB-0080 that would require correction, we adhere to that decision 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: Hearing Decision 17-UI-74467 is affirmed.

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

DATE of Service: February 23, 2017

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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