

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0206-R**

*Reconsideration Granted*  
*Appeals Board Decision 2017-EAB-0206 Adhered to on Reconsideration*

**PROCEDURAL HISTORY:** On December 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 90553). Claimant filed a timely request for hearing. On January 31, 2017, ALJ Wyatt conducted a hearing, and on February 3, 2017, issued Hearing Decision 17-UI-76226, affirming the administrative decision. On February 16, 2017, claimant filed an application for review with the Employment Appeals Board (EAB). On March 8, 2017, EAB issued Appeals Board Decision 2017-EAB-0206, affirming Hearing Decision 17-UI-76226. On March 14, 2017, claimant submitted a timely written argument to EAB. EAB will exercise its discretion under ORS 657.290(3) to reconsider Appeals Board Decision 2017-EAB-0206 and address some of the issues raised in claimant's written argument.

We note that claimant's written argument contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

In her argument, claimant, who worked for the employer as a concierge in a building where certain areas were accessible only by a key card, asserted that the employer unfairly terminated her for lending her key card to her son "on or around October 13<sup>th</sup>." According to claimant, her son's use of the key card to access the restroom in the building where claimant worked occurred without her knowledge or consent. We note, however, that EAB found that the employer did not discharge claimant because she loaned her key card to her son. Instead, EAB held that the employer discharged claimant because she reactivated the key card after the employer took it away from her, copied the reactivated key card, and deleted all records of her son's unauthorized use of the key card from the employer's computer system. Appeals Board Decision 2017-EAB-0206 at 2-3. EAB also found that claimant's denial that she reactivated or copied her key card, or deleted records regarding her son, was neither plausible nor supported by evidence in the record. *Id.*

Because claimant has failed to demonstrate any error of fact or law in Appeals Board Decision 2017-EAB-0206 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:** Reconsideration is granted. Appeals Board Decision 2017-EAB-0206 is adhered to on reconsideration.

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

**DATE of Service:** March 15, 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](http://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.