

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0321

Affirmed
Request for Hearing Withdrawn & Dismissed

PROCEDURAL HISTORY: On January 4, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 84533). Claimant filed a timely request for hearing. On February 8, 2017, ALJ S. Lee convened a hearing, during which claimant withdrew his request for hearing, and issued Hearing Decision 17-UI-76493, dismissing claimant’s request for hearing based upon his withdrawal of it. On February 27, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: The ALJ did not err in dismissing claimant’s request for hearing.

With his application for review, claimant stated,

I assumed that the hearing would allow me to personally present my case to [the ALJ], without my previous manager being present. My concern is that he only knows that I left because of growing ethical and moral concerns. He does not know the details of why I left because I only shared this with Corporate Compliance. If he knew, I was concerned that he would share this information with others and others outside of the Company. Most recently, I spoke with a[n . . .] employee who stated that [the employer’s witness] informed them that I was “suing [the employer]”.

Our profession as Premium Auditors is somewhat unique and a network/small circle of professionals. I’m concerned that he would share this information with someone outside, thus making me look like a liability to other employers.

Accompanying that statement, claimant provided new information and details about his employment with and separation from the employer.

As a preliminary matter, claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and, although he explained why he did not present them at the hearing convened in this matter, he failed to show that factors or circumstances beyond his reasonable control prevented him 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).

Claimant appears to be asking for a new hearing, with the condition that his previous manager does not or cannot attend, or perhaps is simply barred from finding out what claimant says at it. Claimant cannot have the relief he seeks. Oregon law provides the employer in certain unemployment insurance cases the right to be designated a party to the proceedings, and entitles all parties, including the employer, the right to notice of any contested case proceedings and the opportunity to be heard at those proceedings. ORS 657.265; OAR 471-040-0015. At the hearing, the ALJ is required by law to “ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the administrative law judge in the case.” OAR 657.270(3). The ALJ may only exclude a party’s evidence if it is irrelevant, immaterial, or unduly repetitious, and not because of concerns such as those claimant held. Although the ALJ has the authority to exclude a witness from the room while others are testifying, the ALJ cannot otherwise bar a party’s witness from participating in the hearing, providing relevant and material testimony about the matters at issue, or from being examined based upon details claimant provided about his reasons for quitting work. *See* OAR 471-040-0025(3). Moreover, the ALJ is required by law to issue a decision “based upon the evidence in the hearing record” that includes findings of fact and conclusions based upon analysis of the facts, and the ALJ is, likewise, required by law to provide copies of that decision to all the parties or their authorized agents. ORS 657.270(4); OAR 471-040-0030 (August 1, 2004). As a practical matter, the ALJ’s findings, analysis and conclusions – including details explaining claimant’s reasons for leaving work and concerns about the employer’s business – are then mailed to the employer or its representative and, thereafter, become available for review by whomever the employer deems appropriate. Considered from either a legal or practical perspective, there is no way for claimant to obtain the relief he seeks; under the circumstances, he has no right to a hearing in which the employer is barred from learning why he left work or the details surrounding that decision.

ORS 657.270(7)(a)(A) and OAR 471-040-0035(1) (August 1, 2004) permit an ALJ to dismiss a party’s request for hearing if the requesting party asks to withdraw it. During the hearing, the ALJ explained the hearing procedures, specifically, the parties’ right to testify and cross-examine the other party, then asked claimant if he had any questions. The following exchange then occurred:

Claimant: I’m, at this point, not comfortable testifying.

ALJ: Okay, why is that?

Claimant: Because I didn’t realize that [the previous manager] was involved in this.

ALJ: Okay.

Claimant: I’m concerned about some statements that I make.

ALJ: Okay, unfortunately the only way we can proceed forward [claimant] is either we go ahead and take the testimony, or you withdraw the request. Those are the only two ways we can go forward.

Claimant: I will have to withdraw the request.

ALJ: Okay, are you sure you want to do that [claimant] given that if I put this down as a withdrawal then you . . . wouldn't have a chance to have this reheard.

Claimant: Yes, I don't have a choice at this time.

ALJ: Okay. Then [claimant] this is going on the record and I will be dismissing . . . your request to withdraw the hearing appeal. You should receive your written copy of my decision in the mail within a few days.

Audio recording at ~ 4:22. The record clearly establishes that claimant withdrew his request, after having been advised by the ALJ that doing so would mean he would not have a chance to have the case reheard. The ALJ did not err in dismissing claimant's request for hearing pursuant to his request that she do so.

DECISION: Hearing Decision 17-UI-76493 is affirmed.

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

DATE of Service: March 17, 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.

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.