

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0497-R

Reconsideration Granted
Appeals Board Decision 2017-EAB-0497 Adhered to on Reconsideration

PROCEDURAL HISTORY: On March 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 70304). Claimant filed a timely request for hearing. On April 20, 2017, ALJ Amesbury conducted a hearing, and on April 25, 2017, issued Hearing Decision 17-UI-81759, affirming the administrative decision. On May 1, 2017, claimant filed an application for review with the Employment Appeals Board (EAB). On May 19, 2017, EAB issued Appeals Board Decision 2017-EAB-0497, affirming the hearing decision under review.

In Appeals Board Decision 2017-EAB-0497, EAB stated that claimant's written argument would not be considered because claimant failed to certify that he provided a copy of his written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). After the decision was issued, EAB learned that this conclusion was incorrect. A more careful review of claimant's written argument revealed that claimant did, in fact, send a copy of his argument to the employer. EAB therefore will exercise its discretion under ORS 657.290(3) and reconsider Appeals Board Decision 2017-EAB-0497 to address some of the issues raised in claimant's written argument.

We note that claimant's written argument contains information not offered into evidence at the hearing and does not show that factors or circumstances beyond claimant's reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We therefore considered only information received into evidence at the hearing when reaching this decision. See ORS 657.275(2).

In Appeals Board Decision 2017-EAB-0497, we found that claimant voluntarily left work for the employer because claimant believed that the employer unfairly took away the bonus he had been receiving for performing work as an assistant manager. We concluded that the wage reduction the employer imposed was not a grave situation that left claimant no reasonable alternative but to quit his job, as required by ORS 657.176(2)(c) and OAR 471-030-0038(4) (August 3, 2011).

In his written argument, claimant asserted that he never received “a pay raise on my hourly pay like I was promised” for the work he performed as an assistant manager. Claimant’s argument at 1. Claimant contended that after the employer reduced his wages by taking away his opportunity to earn assistant manager bonuses, the employer continued to assign him assistant manager duties. Claimant’s argument at 3. As an additional example of the employer’s unfair pay practices, claimant alleged that on numerous occasions, the store manager altered his time card after claimant “clocked off” to show that claimant worked less time than he actually did, resulting in claimant failing to get paid for all the time had worked. According to claimant, the store manager did this to receive a bonus for keeping his labor costs low. Claimant’s argument at 1-2.

In response to claimant’s allegations, the employer asserted at the hearing that the elimination of the opportunity to receive assistant manager bonuses resulted from claimant’s request to be relieved of his assistant manager duties, and that claimant was no longer assigned these duties after he asked to be relieved of them. Audio recording at 29:22. In regard to the time card issue, the employer’s witness testified that the employer’s time keeping system was “tight,” that the system would show if an employee’s time record had been manually altered after an employee “clocked out,” and that there was no indication that anyone ever changed claimant’s time records. Audio recording at 31:35.

Based on this record, we conclude that the evidence regarding claimant’s job duties and the employer’s pay practices is equally balanced. A claimant who leaves work voluntarily must prove, by a preponderance of the evidence, that he had good cause for leaving work when he did. *Young v. Employment Dept.*, 170 Or App 752, 13 P3d 1027 (2000). A “preponderance of the evidence” means that it is more likely than not that events occurred as claimant alleged. Where, like in this case, the evidence about the events at issue is equally balanced, it is just as likely as not that one thing occurred as it is another, and claimant has not proven his case by a preponderance of the evidence. Because claimant failed to meet this burden, he did not demonstrate good cause for quitting his job.

Other issues raised in claimant’s written argument have no relevance to our determination whether he had good cause to voluntarily leave work, or were adequately addressed in Appeals Board Decision 17-UI-0497. We therefore find no error of fact or law in that decision that would require correction, and adhere to Appeals Board Decision 17-UI-0497 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-0497 is adhered to on reconsideration.

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

DATE of Service: May 24, 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.