

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1311**

*Affirmed*  
*Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On September 18, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with Axiom Eco-Pest Control on June 17, 2017 without good cause, and therefore was disqualified from receiving benefits “for the period beginning June 11, 2017 and until the claimant has earned and received remuneration from employment...in an amount at least equal to four times the weekly benefit amount subsequent to the week in which the separation occurred.” (Decision # 110835). Claimant filed a timely request for hearing. On October 24, 2017, ALJ Seideman convened a hearing at which claimant withdrew his request for hearing, and issued Hearing Decision 17-UI-95267 dismissing claimant’s request. On November 8, 2017, claimant filed an application for review of Hearing Decision 17-UI-95267 with the Employment Appeals Board (EAB).

In written argument, claimant asserted that his employment with Axiom Eco-Pest Control that was the subject of decision # 110835 and the hearing held on October 24, 2017 was not his most recent employment, which is the issue he wanted to now raise and the reason he filed his application for review. Claimant asserted, “Being my last/most recent employer, IBM should be the responsible for my unemployment benefits, not Axiom. I am appealing the decision that Axiom is being considered my most recent employer.” Written Argument at 2. However, decision # 110835 did not state that Axiom was claimant’s most recent employer. It simply stated that because the Department concluded claimant voluntarily left that employment without good cause, claimant was disqualified from receiving benefits until such time that claimant “earned and received remuneration from employment...in an amount at least equal to four times the weekly benefit amount subsequent to the week in which the separation occurred.” Under ORS 657.176(2), it does not matter that claimant may have been concurrently employed by another employer and that the other employment may have ended after the Axiom employment ended. All that matters is claimant is disqualified from receiving benefits from the date

specified in decision # 110835 until he requalifies by earning “an amount at least equal to four times the weekly benefit amount subsequent to the week in which the separation occurred.”<sup>1</sup>

The only issue before EAB on this appeal is whether claimant withdrew his request for hearing on decision # 110835 and whether the ALJ therefore properly dismissed his request.<sup>2</sup> EAB has reviewed the entire hearing record, including the audio record of the exchange between claimant and the ALJ on October 24, 2017. Claimant clearly requested withdrawal of his hearing request knowing that the decision at issue might affect his qualification for benefits. Audio Record ~ 5:20 to 15:40. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review, which dismissed claimant’s request for hearing, is **adopted**.

**DECISION:** Hearing Decision 17-UI-95267 is affirmed.

J. S. Cromwell and D. P. Hettle.

**DATE of Service:** November 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.

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<sup>1</sup> **657.176 Grounds and procedure for disqualification; exceptions; rules.** (1) An authorized representative designated by the Director of the Employment Department shall promptly examine each claim to determine whether an individual is subject to disqualification as a result of a separation, termination, leaving, resignation, or disciplinary suspension from work...

(2) An individual shall be disqualified from the receipt of benefits until the individual has performed service in employment subject to this chapter...for which remuneration is received that equals or exceeds four times the individual’s weekly benefit amount subsequent to the week in which the act causing the disqualification occurred, if the authorized representative designated by the director finds that the individual:

- (a) Has been discharged for misconduct connected with work;
- (b) Has been suspended from work for misconduct connected with work;
- (c) Voluntarily left work without good cause;...

<sup>2</sup> 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.