

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0056-R

*On Reconsideration, EAB Decision 2018-EAB-0056 Adhered to as Modified
Disqualification*

PROCEDURAL HISTORY: On December 12, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 82241). Claimant filed a timely request for hearing. On January 4, 2018, ALJ Meerdink conducted a hearing at which the employer did not appear, and on January 5, 2017 issued Hearing Decision 18-UI-100256, affirming the Department's decision. On January 12, 2018, claimant filed an application for review with the Employment Appeals Board (EAB). On February 13, 2018, EAB issued Appeals Board Decision 2018-EAB-0056, affirming the ALJ's decision. On March 2, 2018, claimant filed a timely request for reconsideration. This decision is issued pursuant to EAB's authority under ORS 657.290(3) and OAR 471-041-0145.

CONCLUSIONS AND REASONS: On reconsideration, we adhere to EAB Decision 2018-EAB-0056 as modified herein, and conclude claimant was properly disqualified from receiving unemployment insurance benefits.

Any party may request EAB reconsider its decisions to correct an error of material fact, among other reasons. ORS 657.290(3); OAR 471-041-0145(1) (October 29, 2006). Claimant's request complied with the procedural requirements set forth in OAR 471-041-0145 and alleges EAB made errors of material fact in reaching 2018-EAB-0056. Her request for reconsideration is, therefore, allowed.

Claimant alleged in her request for reconsideration that EAB erred with regard to the nature of the work offered by the employer. Claimant alleged, contrary to EAB's findings, that the offered work was temporary, would ultimately require a license she did not have, and would require her to travel to Pittsburgh every other week for the duration of her employment. Claimant also asserted that she was "told I would be assigned a 'work from home' client and, possibly, there might be additional travel" but that the employer "would make every effort" to constrict her travel to her region, or possibly "places like Roseburg and Coos Bay." Although that information appears to be relevant and material to a determination of whether or not claimant had good cause to quit work, EAB has reviewed the record in this matter and found that claimant did not provide any of that information during the January 4th

hearing. EAB is required by statute to conduct a *de novo* review “on the record,” that is, to review cases based on the information parties provided to the ALJ at the hearing. ORS 657.275(2). Although EAB is allowed to consider certain new information that was not part of the record, EAB may only do that if the party offering the new information also shows that circumstances beyond her reasonable control prevented her from offering the information at the hearing. OAR 471-040-0090 (October 29, 2006). In this case, nothing at the hearing suggested that claimant was prevented from offering information about her work separation or the circumstances that prompted it, nor did claimant assert or show in her request for reconsideration that such circumstances existed. Therefore, to the extent claimant alleged that EAB erred in failing to make findings of fact based upon evidence that she did not place in the record, we find that EAB did not err.

Claimant also alleged in her request for reconsideration that EAB erred with respect to findings of fact related to the type of vehicle she would be expected to use while traveling, her responsibility for caring for her mother, and in finding that claimant did not express concern to the employer about the Pittsburgh assignment. We have reviewed the facts as presented in claimant’s request for reconsideration, re-reviewed the hearing record, and compared both to the findings of fact in EAB decision 2018-EAB-0056. While we can appreciate that EAB’s findings might have benefited from inclusion of more detail or context, we cannot identify errors in which EAB’s findings contradicted the evidence claimant presented at the hearing. For example, EAB found as fact that claimant “did not specifically express to the employer that she was concerned about driving in Pittsburgh or other metropolitan areas.” EAB Decision 2018-EAB-0056 at 2, finding of fact (6). That finding of fact was based upon claimant’s testimony that she did not specifically state after being assigned to travel to Pittsburgh that she had concerns specific to driving in Pittsburgh. *See* Audio recording at ~ 20:00. However, EAB’s decision could have made it more clear that claimant had also testified generally that she had made it clear that she “was not what you’d call a city gal,” had refused a previous assignment in Portland, Oregon because she was not comfortable in large cities, and considered her discomfort with large cities well-known to the employer. *See* Audio recording at 16:10. However, the failure to include those details in EAB’s findings did make the findings incorrect, and did not affect the outcome of the decision as a whole. Likewise, EAB’s findings with respect to claimant’s mother might have been more comprehensive, but the lack of detail in them did not affect how EAB weighed the evidence, and did not change the fact that while claimant had potential responsibilities toward her mother’s care, those potential responsibilities did not amount to a grave situation that necessitated she end the employment relationship *when she did*.¹ Therefore, while EAB’s decision might have benefited from inclusion of more detail, EAB’s findings that claimant did not “specifically express . . . that she was concerned about driving *in Pittsburgh*” and regarding claimant’s transportation while traveling and her mother are supported by evidence in the record. EAB therefore did not find error with respect to those findings.

We also note, however, that even if EAB agreed with claimant that it had erred with respect to those matters, the outcome of this decision would remain the same. Although claimant thought it likely she would not be allowed to use taxis or other car services rather than drive in Pittsburgh, and had expressed

¹ We also note that while individuals who leave work for compelling family reasons, such as the necessity of caring for an ill or disabled relative, might sometimes have good cause for quitting work under OAR 471-030-0038(5)(e), in order to show good cause the individual must prove that “the individual’s employer does not accommodate the employee’s request for time off.” OAR 471-030-0038(1)(e)(B). Claimant did not assert or show that the employer would have refused to accommodate her request for time off to attend to her mother, if, in fact, doing so had become necessary.

concerns about driving in or visiting large cities, and thought she might need to provide assistance to her mother, claimant did not have any medical diagnoses or health conditions that made driving or visiting large cities hazardous to her physical or mental health or for any other reason, and did not show she had to quit when she did to help her mother. The record therefore fails to show that claimant's concerns were such that no reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have felt the prospect of having to do those things was so grave that they had to quit an otherwise suitable job with the employer expressly to avoid such conditions. In the absence of such a showing, even if we had found facts as claimant related them in her request for reconsideration, claimant would still have been disqualified from receiving unemployment insurance benefits for voluntarily leaving work when she did without good cause.²

DECISION: On reconsideration, EAB Decision 2018-EAB-0056 is adhered to as modified, and Hearing Decision 18-UI-100256 remains affirmed.

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

DATE of Service: March 8, 2018

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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² We also note that in reconsidering our decision in this matter, we found an error of fact in EAB's finding of fact (2), wherein we found that "the employer's client notified the employer that it was discontinuing its relationship with the employer." The record shows that claimant actually testified that the client discontinued *claimant's* services but, at least at that time and subject to a possible future bidding process, continued its relationship with *the employer*. *See* Audio recording at ~ 7:00-9:00. EAB's error in this finding was not material to the decision, however, and did not affect its outcome.