

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0266-R

*EAB Decision 2018-EAB-0266 Adhered to on Reconsideration
No Disqualification*

PROCEDURAL HISTORY: On February 1, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 132034). Claimant filed a timely request for hearing. On March 5, 2018, ALJ Amesbury conducted a hearing, and on March 7, 2018, issued Order No. 18-UI-104591, concluding the employer discharged claimant, but not for misconduct. On March 12, 2018, the employer filed an application for review of Order No. 18-UI-104591 with the Employment Appeals Board (EAB). On April 6, 2018, EAB issued Appeals Board Decision 2018-EAB-0266, affirming the ALJ's decision. On April 6, 2018, the employer 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-0266, and conclude claimant was properly granted 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). The employer's request complied with the procedural requirements set forth in OAR 471-041-0145, and alleges that EAB made errors of material fact and law in reaching 2018-EAB-0266. Its request for reconsideration is, therefore, allowed.

The employer alleged in its request for reconsideration that the request was based on "contradicting information stated in the evidence of the EAB's Conclusions and Decisions." Request for Reconsideration at 1. The employer explained that EAB's statement in 2018-EAB-0266 that "claimant reasonably believed [after the initial January 8 meeting] that he had not been assigned a load that day" was inconsistent with its subsequent statement that claimant returned home after the initial meeting "to prepare for an overnight trip," and caused EAB to erroneously reach its ultimate conclusion that the employer discharged claimant, but not for misconduct.

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). Our *de novo* review of the

record here establishes that the employer terminated claimant for not checking in with the dispatcher after the initial January 8 meeting because if he had, he would have learned that he had just been assigned a day trip for that day, in addition to the overnight trip he went home to prepare for, and would have stayed to drive that trip rather than go home from the initial meeting. Audio Record ~ 17:45 to 18:15; 27:15 to 29:45. However, our *de novo* review of the record also establishes that claimant reasonably believed that he had not been assigned a load for that day because he asked, and had been told by the dispatcher, just prior to the meeting, that he had not been assigned a load for that day and did not hear any employer representative during the meeting direct him to report to the dispatcher immediately after the meeting.

We have reviewed the facts as presented in the employer's request for reconsideration, re-reviewed the hearing record, and compared both to the Findings of Fact and Conclusions and Reasons in EAB decision 2018-EAB-0226. While we can appreciate that EAB's findings and analysis might have benefited from inclusion of more detail or context, we cannot identify errors in which EAB's findings or analysis contradicted the evidence the employer presented at the hearing. On the record before us, the employer did not meet its burden of proof.

DECISION: On reconsideration, EAB Decision 2018-EAB-0226 is adhered to, and Order No 18-UI-104591 remains affirmed.

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

DATE of Service: May 3, 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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