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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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<p>EMPLOYMENT APPEALS BOARD DECISION 2018-EAB-0269-R</p>
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EAB Decision 2018-EAB-0269 Undisturbed
Order No. 18-UI-103938 Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 23, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 72440). Claimant filed a timely request for hearing. On February 8, 2018, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for February 16, 2018. On February 16, 2018, ALJ Monroe conducted a hearing at which the employer failed to appear, and on February 23, 2018 issued Order No. 18-UI-103938 concluding the employer discharged claimant, but not for misconduct. On March 13, 2018, the employer filed an application for review with the Employment Appeals Board (EAB). On April 4, 2018, EAB issued EAB Decision 2018-EAB-0269, affirming Order No. 18-UI-103938. On April 5, 2018, the employer filed a request for reconsideration. On April 6, 2018, EAB granted the employer's request.

CONCLUSIONS AND REASONS: EAB Decision 2018-EAB-0269 is undisturbed.

In its April 5, 2018 request for reconsideration, the employer asked EAB to consider new information regarding claimant's work separation. EAB may consider new information that is not part of the record if the information is relevant and material to EAB's determination and the party offering the information demonstrates that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. OAR 471-040-0090 (October 29, 2006). The employer asserted that its new information was relevant and material to whether claimant should be disqualified from receiving benefits, and that circumstances beyond the employer's reasonable control, its failure to receive the February 8, 2018 notice of hearing in the mail, prevented the employer from appearing at the February 16, 2018 hearing and offering its information at that time.

On April 13, 2018, however, EAB received a letter from the employer's representative stating as follows:

[The employer] stands by every statement in its April 5 motion. However, [the employer] itself has reconsidered whether or not it wants to continue in this proceeding and to present evidence in a proceeding that could potentially deprive [claimant's] two young children of food on the table. And, upon reconsideration, [the employer] has decided that it will not present any evidence in this proceeding and will do nothing further that might prevent [claimant], a young mother, from obtaining benefits from the Employment Department during the period of time that she is between jobs.

It is unclear from the April 13, 2018 letter whether the employer wants to withdraw its request for reconsideration of EAB Decision 2018-EAB-0269, or withdraw its request for EAB to consider the employer's new information when reconsidering EAB Decision 2018-EAB-0269. If the former, the employer's withdrawal of its request for reconsideration is allowed, and the request for reconsideration is dismissed. If the latter, the employer's withdrawal of its request for EAB to consider new information is allowed and, on re-review of the hearing record, EAB Decision 2018-EAB-0269 is adhered to on reconsideration. Either way, Order No. 18-UI-103938 remains affirmed. Claimant is not disqualified from receiving benefits based on her work separation from the employer.

DECISION: EAB Decision 2018-EAB-0269 is undisturbed. Order No. 18-UI-103938 remains affirmed.

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

DATE of Service: April 24, 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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