

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0372

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 2, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 90130). Claimant filed a timely request for hearing. On April 5, 2018, ALJ Janzen conducted a hearing, and on April 6, 2018 issued Order No. 18-UI-106803, affirming the Department's decision. On April 12, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

In his written argument, claimant argued that various of the ALJ's factual findings were incorrect because "the Judge took my former employer's word during the telephone hearing at fact value and didn't ask me what exactly I did at my former job as a dental lab assistant," and offered new information to refute the employer's testimony and the ALJ's findings. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), however, EAB may only consider information received into evidence at the hearing when reaching a decision. In this case, the ALJ asked claimant relevant questions about why he refused to accept the transfer the employer offered to him and why he thought his new duties would not suit him, and gave claimant the opportunity to question the employer's witnesses about their evidence and add new information during the hearing, opportunities claimant declined. Audio recording at ~ 56:40, 57:00. If claimant disagreed with the employer's assessment of his work history or qualifications to do some of the tasks it was assigning to him, or had evidence to contradict the employer's assertions about his work experience or qualifications for the duties associated with the transfer, he had the opportunity to provide it during the hearing. Claimant therefore did not show that EAB may consider his new information.

EAB considered claimant's remaining arguments, to the extent they were based upon the hearing record. Although claimant understandably had serious concern about his physical capacity to handle the new duties the employer was assigning to him, the record shows that claimant had prior work experience and the physical capacity to perform many of the new duties that would be expected of him. The record also shows that the employer had a history of accommodating claimant's physical restrictions by adapting his work space, duties, and workload, as well as the employer's production expectations, to suit his restrictions. The employer had also expressed a willingness to work with claimant to adapt his

workspace and schedule when he transferred to the new position. Under those circumstances, and on this hearing record, it is more likely than not that accepting the transferred duties and attempting to perform the new duties, while reporting any difficulties to the employer and working with the employer to adapt to his workspace, duties and workload as necessary, was a reasonable alternative to quitting work.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the order under review is **adopted**.

DECISION: Order No. 18-UI-106803 is affirmed.

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

DATE of Service: May 10, 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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