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

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EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0394-R

Affirmed, Request to Withdraw Allowed
Appeals Board Decision 2018-EAB-0384 Adhered to On Reconsideration

PROCEDURAL HISTORY: On March 23, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 134920). On April 3, 2018, claimant filed a timely request for hearing. On April 12, 2018, claimant called the Office of Administrative Hearings (OAH) and orally withdrew his request for hearing, and ALJ M. Davis issued Order No. 18-UI-107248 granting claimant's request to withdraw and dismissing his request for a hearing. On April 17, 2018, claimant filed an application for review with the Employment Appeals Board (EAB). On April 26, 2018, EAB issued Appeals Board Decision 2018-EAB-0394, affirming the ALJ's Order. On May 2, 2018, claimant filed a timely request for reconsideration with EAB. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: On reconsideration, we adhere to Appeals Board Decision 2018-EAB-0384.

OAR 471-041-0145 provides that any party may request reconsideration to correct an error of material fact or law. Claimant requested reconsideration, alleging that EAB erred in allowing him to withdraw his request for hearing because his request was not in writing.

Claimant is correct that an applicant's request to withdraw an *application for review* at EAB must be written before it may be considered or allowed. *See* OAR 471-041-0098. However, the question before EAB in claimant's case was *not* whether to allow claimant to withdraw his application for review, but whether or not the ALJ erred in allowing claimant to withdraw his *request for hearing* at OAH. OAR 471-040-0035(1) – the rule that applies to requests to withdraw requests for hearing at OAH – states "An administrative law judge may order that a request for hearing be dismissed upon request from the appellant to withdraw the request for hearing." There is no requirement in that rule that the appellant's request be in writing.

In this case, there is compelling evidence that claimant filed the request for hearing, and, during an April 11, 2018 phone call he placed to OAH, "request[ed] to be removed from any administrative ruling," and, when the OAH employee asked if he was withdrawing his request for hearing, claimant stated, "yes, he does not want to talk with an administrative judge." *See* Memo To File/Telephone Record. On the basis of claimant's oral request to withdraw his request for hearing, OAH granted claimant's request and dismissed claimant's request for hearing pursuant to OAR 471-040-0035(1). OAH did not err in so doing, and EAB did not err in affirming the ALJ's Order granting claimant's withdrawal based upon the hearing record under review. EAB therefore adheres to Appeals Board Decision 2018-EAB-0384 on reconsideration.

DECISION: On Reconsideration, Order No. 18-UI-107248 is affirmed.

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

DATE of Service: <u>May 7, 2018</u>

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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