

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0702

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 21, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 101658). Claimant filed a timely request for hearing. On June 25, 2018, ALJ Griffin conducted a hearing, and on June 29, 2018 issued Order No. 18-UI-112352, concluding claimant voluntarily left work with good cause. On July 12, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer's written argument consisted predominantly of information that was not part of the hearing record. In order for EAB to consider the employer's new information, the employer must show that factors or circumstances beyond their reasonable control prevented them from offering the information during the hearing. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

Although one of the employer's co-owners was unable to participate in the hearing due to and "unexpected and urgent" "equipment malfunction" at the business, the employer's argument states that he and the other co-owner "agreed that she would represent the employer during the hearing." The employer made a conscious choice about who would participate in the hearing; it was within the employer's reasonable control to make a different choice about who would participate.

The employer argued that the co-owner who participated in the hearing on the employer's behalf was only prepared to discuss the events of April 28th. However, the notice of hearing mailed to the employer did not advise the employer that the hearing was about the events of April 28th. The notice stated that the hearing was regarding the May 21, 2018 administrative decision, and that decision was not confined to what happened on April 28th, but rather stated that claimant "quit work because of the working conditions," which "was a grave situation but you did not pursue available reasonable alternatives prior to quitting."

Having received the notice of hearing, the co-owners decided who would participate in the hearing. The co-owners were notified of the issue that would be discussed at the hearing, but were not prepared to

provide evidence about the “working conditions” or “grave situation” that caused claimant to quit work. Doing so was not a circumstance beyond the employer’s reasonable control.

It is also notable that, as claimant testified about the circumstances that caused her to leave work, the employer’s witness did not express that she was unprepared to testify about those matters, did not ask the ALJ to call the other co-owner as a witness, and did not ask the ALJ to continue the hearing to another time so the other co-owner could testify. Notifying the ALJ that there was another witness that could provide firsthand testimony about the conditions claimant described, and asking the ALJ to allow that witness to testify, was also within the employer’s reasonable control.

For those reasons, the employer’s request to submit new information to EAB for consideration on review is denied. We considered only information received into evidence at the hearing when reaching this decision.

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-112352 is affirmed.

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

DATE of Service: August 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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