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EO: 700  
BYE: 201922

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

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VQ 005.00  
SE 005.00

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<p><b>EMPLOYMENT APPEALS BOARD DECISION</b> <b>2018-EAB-0831</b></p>
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*Affirmed*  
*Disqualification*  
*Benefits Are Not Payable June 3, 2018 through August 18, 2018*

**PROCEDURAL HISTORY:** On June 29, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant not for misconduct (decision # 100807). On July 9, 2018, the Department served notice of an administrative decision concluded claimant was eligible for unemployment benefits during the period between two successive academic years (decision # 85347). The employer filed timely requests for hearing on both decisions. On August 2, 2018, ALJ Frank conducted hearings regarding decisions # 100807 and # 85347, and on August 8, 2018 issued Order No. 18-UI-114578, concluding claimant voluntarily left work without good cause, and Order No. 18-UI-114740, concluding claimant was not eligible to receive benefits for the period June 3, 2018 through August 18, 2018. On August 25, 2018, claimant filed applications for review of both hearing orders with the Employment Appeals Board (EAB) for both hearing orders.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 18-UI-114578 and 18-UI-114740. For case-tracking purposes, this decision is being issued in duplicate (Appeals Board Decisions 2018-EAB-0831 and 2018-EAB-0830).

**WRITTEN ARGUMENT:** Claimant submitted written arguments to EAB containing new information not offered at hearing. The new information was an email and a settlement agreement between claimant and the employer. Claimant asserted that he did not offer the documents at hearing because he did not understand the importance of responding to the employer's evidence at hearing, and alleged that the employer's witness provided misleading testimony and the new information is necessary to rebut that testimony. However, claimant had an opportunity at hearing to cross-examine the employer's witness and offer his own evidence to challenge the truth of the employer's evidence at hearing. Because

claimant did not present any evidence showing that factors or circumstances *beyond his reasonable control* prevented him from trying to disprove the witness' testimony during the hearing as required under OAR 471-041-0091(2) (October 29, 2006), claimant's request to submit the new information is denied. EAB considered only information received into the record when reaching this decision. See ORS 657.275(2).

However, EAB did consider the remainder of claimant's written arguments when reaching this decision. Claimant essentially asserts in his written arguments that the employer intended to discharge him, and that no reasonable and prudent person would bypass a settlement offer that contained beneficial terms, but that required him to quit, where discharge was otherwise inevitable. Claimant's argument is flawed in at least two respects. First, the record does not show that discharge was inevitable. Claimant had a contract for employment in the same position through June 2019. Exhibit 1 at 13. Although the human resources representative stated that the school would recommend discharge to the superintendent, there is no information in the record to show that the superintendent, much less the school board, which would have to approve a discharge decision, would agree with the school's initial recommendation. Even had they ultimately done so, claimant could have remained employed through additional due process proceedings. Second, claimant did not receive the resignation agreement until after the May 3, 2018 meeting, after claimant had already resigned. Therefore, the terms of the agreement could not have affected claimant's decision to voluntarily leave work when he did. Claimant compares his case to Appeals Board Decision 2017-EAB-1140<sup>1</sup>, arguing that the facts and outcome of that case are comparable to his case because in claimant's case, the employer planned to discharge claimant and there was *subsequent* negotiation of an incentivized resignation agreement after the May 3 meeting during which claimant resigned. We disagree because, unlike in claimant's case, the employer in Appeals Board Decision 2017-EAB-1140 presented that claimant with a settlement agreement in lieu of termination *before* that claimant agreed to resign, and the record there showed that the settlement agreement "was the primary reason she decided to agree [to resign]." As already stated, claimant could not have quit because of the resignation agreement in the present case because he quit before it was offered to him.

EAB reviewed the entire record of both hearings and the written arguments submitted by claimant. On *de novo* review and pursuant to ORS 657.275(2), Order Nos. 18-UI-114578 and 18-UI-114740 are **adopted**.

**DECISION:** Order Nos. 18-UI-114578 and 18-UI-114740 are affirmed.

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

**DATE of Service:** October 2, 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,

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<sup>1</sup> Claimant cites to Appeals Board Decision 2017-EAB-0861 in his written argument, but his argument appears to be based on Appeals Board Decision 2017-EAB-1140, which is the decision from subsequent proceedings in the same case.

Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](http://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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