

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0967

Affirmed
No Disqualification

PROCEDURAL HISTORY: On August 27, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for committing a disqualifying act under the Employment Department’s drug and alcohol adjudication policy (decision # 145327). Claimant filed a timely request for hearing. On September 17, 2018, ALJ Scott conducted a hearing, and on September 24, 2018, issued Order No. 18-UI-117081, concluding claimant did not commit a disqualifying act. On October 5, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted written argument to EAB, but failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we considered the entire record, but did not consider the employer’s written argument when reaching this decision. The employer also submitted documents that were already included in the record as Exhibit 1. EAB did consider those documents as part of the hearing record.

On *de novo* review and pursuant to ORS 657.275(2), Order No. 18-UI-117081 is **adopted**, except that we correct the paragraph in page 6 of the Opinion section of the Order regarding ORS 183.450(2) and the employer’s burden of proof to read as follows: “The employer has the burden of proof in a discharge case. *Babcock v. Employment Division*, 25 Or App 661, 550 P2d 1233 (1976). The employer has not met that burden in this case.”¹

DECISION: Order No. 18-UI-117081 is affirmed.

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

¹ ORS 183.315(3) states that ORS 183.450(2) does not apply to the Employment Appeals Board or the Employment Department.

DATE of Service: November 7, 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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