

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0859-R

Request for Reconsideration Allowed
EAB Decision 2019-EAB-0859 Adhered to on Reconsideration
Order No. 19-UI-135889 Affirmed ~ Disqualification

PROCEDURAL HISTORY AND FINDINGS OF FACT: On August 7, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause, and was disqualified from benefits effective June 16, 2019 (decision # 80500). On August 9, 2019, claimant filed a timely request for hearing, asserting that she had good cause to quit working for the employer due to “lateral violence” in the workplace.¹ On August 13, 2019, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for August 28, 2019, which included a Notice of Rights describing the hearing procedure, and copies of the applicable laws and rules.² On August 28, 2019, ALJ Scott conducted a hearing, and on August 30, 2019, issued Order No. 19-UI-135889, affirming decision # 80500. On September 4, 2019, claimant filed a timely application for review with the Employment Appeals Board (EAB).

EAB reviewed the entire hearing record and the written argument claimant submitted on September 23, 2019. However, claimant’s written argument contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant’s reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090

¹ EAB has taken notice of this fact, which is contained in claimant’s August 9th request for hearing. OAR 471-041-0090(1) (May 13, 2019). Because claimant submitted the request for hearing, a copy has not been mailed with this decision. If any party would like to receive a copy of the request for hearing, it will be made available to them upon request. Any party that objects to our taking notice of this fact must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

² EAB has taken notice of this fact, which is contained in the August 13th notice of hearing. OAR 471-041-0090(1) (May 13, 2019). Because the notice of hearing was mailed to claimant, a copy has not been mailed with this decision. If any party would like to receive a copy of the notice of hearing, it will be made available to them upon request. Any party that objects to our taking notice of this fact must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the noticed fact will remain in the record.

(May 13, 2019), EAB considered only information received into evidence at the hearing, and claimant's written argument only to the extent it was based thereon. On October 11, 2019, EAB issued EAB decision 2019-EAB-0859, affirming and adopting Order No. 19-UI-135889. On October 14, 2019, claimant filed a request for reconsideration. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is allowed. On reconsideration, we adhere to EAB Decision 2019-EAB-0859. Order No. 19-UI-135889 is affirmed.

ORS 657.290(3) authorizes EAB reconsider any previous decision of the Employment Appeals Board, including "the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law." "Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice." OAR 471-041-0145(1) (May 13, 2019). The request is subject to dismissal unless it includes a statement that a copy was provided to the other parties, and is filed on or before the 20th day after the decision sought to be reconsidered was mailed. OAR 471-041-0145(2).

Here, claimant's request for reconsideration included a statement that a copy was provided to the employer, and was filed three days after EAB Decision 2019-EAB-0859 was mailed. Claimant's request for reconsideration therefore is allowed.

In her request for reconsideration, claimant stated that she was requesting a reconsideration in accordance with OAR 471-041-0145, and attached an expanded version of the written argument and new information she submitted on September 23, 2019. Claimant did not assert that EAB Decision 2019-EAB-0859 erred in concluding that claimant failed to show that factors or circumstances beyond her reasonable control prevented her from offering the new information during the August 28th hearing. Nor did claimant ask EAB to correct any particular error of material fact for law in EAB Decision 2019-EAB-0859, or to explain any unexplained inconsistency with Department rule, officially stated Department position, or prior Department practice. However, we infer that claimant is asking EAB to reconsider its conclusion that claimant working for the employer without good cause based on the new information she submitted with her request for reconsideration.

Any party may request that EAB consider additional evidence, and EAB may allow such a request when the party offering the additional evidence establishes that the additional evidence is relevant and material to EAB's determination, and that factors or circumstances beyond the party's reasonable control prevented the party from offering the additional evidence into the hearing record. OAR 471-041-0090(1)(b). Here, claimant's new information is relevant to EAB's determination of whether claimant quit working for the employer with good cause. The issue is whether claimant has established that factors or circumstances beyond her reasonable control prevented her from offering the information into evidence at the August 28th hearing.

In her request for reconsideration, claimant asserted that she did not offer the information into the hearing record because she did not know the ALJ would want specific dates and times of the lateral violence that caused her to quit working for the employer, and was not aware that she had the burden to prove that she quit working for the employer with good cause. However, claimant failed to show that it

was beyond her reasonable control to understand from decision # 80500 and the August 13th notice of hearing that she needed to offer into the hearing record all information relevant to her belief that she quit working for the employer with good cause due to lateral violence in the workplace, regardless of whether she understood she had the burden of proof on that issue. Nor did claimant assert that it was beyond her reasonable control to gather that information in time to offer it into evidence at the August 28th hearing. Claimant therefore failed to establish that factors or circumstances beyond her reasonable control prevented her from offering her additional evidence into the hearing record, and her request for EAB to consider additional evidence is denied.

On reconsideration, we adhere to EAB Decision 2019-EAB-0859. Order No. 19-UI-135889 is affirmed.

DECISION: Claimant's request for reconsideration is allowed. On reconsideration, we adhere to EAB Decision 2019-EAB-0859. Order No. 19-UI-135889 is affirmed.

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

DATE of Service: October 22, 2019

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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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄຳຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄຳຮ້ອງຂໍການທົບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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