

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0110-R

Request for Reconsideration Allowed
EAB Decision 2023-EAB-0110 Adhered to on Reconsideration
Disqualification

PROCEDURAL HISTORY AND FINDINGS OF FACT: On November 10, 2022, 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 receiving benefits effective October 2, 2022 (decision # 71950). Claimant filed a timely request for hearing. On December 12 and 28, 2022, ALJ Chiller conducted hearings, and on December 30, 2022 issued Order No. 22-UI-211313, affirming decision # 71950. On January 18, 2023, claimant filed an application for review with the Employment Appeals Board (EAB). On March 13, 2023, EAB issued EAB Decision 2023-EAB-0110, affirming Order No. 22-UI-211313. On March 31, 2023, claimant filed a request for reconsideration of EAB Decision 2023-EAB-0110 with EAB.

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, EAB Decision 2023-EAB-0110 is adhered to as clarified herein. Claimant quit work without good cause.

ORS 657.290(3) authorizes EAB to reconsider any previous decision of EAB, 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).

EAB issued EAB Decision 2023-EAB-0110 on March 13, 2023. Claimant filed her request for reconsideration on March 31, 2023, less than 20 days after EAB Decision 2023-EAB-0110 was mailed. Claimant's request for reconsideration therefore was timely, and is allowed.

EAB Decision 2023-EAB-0110 stated, "Claimant's argument contained information that was not part of the hearing record" and that "EAB considered only information received into evidence at the hearing when reaching this decision." EAB Decision 2023-EAB-0110 at 1. In her request for reconsideration, claimant asserted that "Everything that was included in the written argument for review was indeed sent in and included in the original hearing." Request for reconsideration at 1. However, claimant's argument contained statements that were not included in testimony or in the exhibits admitted at hearing.

In claimant's written argument, she stated, "I was personally text [*sic*] and rehired by Moriah with a 15% wage increase because I was already trained and proficient and had good remarks by the doctors." Written Argument at 1. Claimant being rehired by the employer and receiving a raise during her tenure with the employer are in evidence. *See* December 12, 2022 Transcript at 4-5; Exhibit 18. The percentage of the raise claimant provided and the reasoning for claimant receiving this raise are not in evidence. Claimant did not show that factors or circumstances outside of claimant's control prevented her from offering this information into evidence. This information is also not relevant or material to the outcome of EAB's determination, as required by OAR 471-040-0090(1)(b)(A). As such, EAB did not consider this limited information when reaching its decision.

Claimant's written argument also contained information that was included in the document that claimant submitted to OAH, but that was not admitted into evidence. For example, claimant's written argument lists a series of dates that claimant worked "extra fill in days." Claimant's Written argument at 1. This information was submitted to OAH, but was not admitted into evidence. ALJ Chiller informed claimant that she was not admitting claimant's written statement into evidence because the proper way to introduce this evidence was through sworn testimony. December 12, 2022 Audio Recording at 10:27 to 11:07. Claimant did not show that factors or circumstances outside of her control prevented her from submitting this information into evidence through her testimony.

Claimant did not assert that the ALJ erred by failing to admit this written statement into evidence at the time of hearing. Moreover, even if the ALJ did err, claimant has not shown that her rights were substantially prejudiced by this error. OAR 471-040-0025(5) provides in pertinent part: "Irrelevant, immaterial, or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude the administrative law judge from entering a decision unless shown to have substantially prejudiced the rights of a party." Therefore, EAB did not consider the limited information that was contained in this document, but not included in the hearing record. EAB did consider claimant's argument, outside of this limited information, in reaching its decision.

Because EAB considered claimant's written argument to the extent that it was based on the hearing record, claimant has not shown that EAB Decision 2023-EAB-0110 contained an error of material fact or law, or an inconsistency with Employment Department rule, officially stated Department position, or prior Employment Department Practice. EAB conducted a thorough review of the hearing record from December 12, 2022 and December 28, 2022, as well as a thorough review of the 27 exhibits that were admitted into the hearing record. Claimant has not met her burden to prove that she quit for a reason of

such gravity that she had no reasonable alternative but to quit. For these reasons, EAB Decision 2023-EAB-0110 is adhered to on reconsideration.

DECISION: Claimant's request for reconsideration is allowed. EAB Decision 2023-EAB-0110 is adhered to on reconsideration.

D. Hettle and A. Steger-Bentz;
S. Serres, not participating.

DATE of Service: May 8, 2023

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 ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

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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