

**EMPLOYMENT APPEALS BOARD DECISION**  
**2023-EAB-0717**

*Affirmed*  
*Request to Reopen Allowed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On February 13, 2023, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged by the employer for misconduct and disqualified from receiving benefits effective January 15, 2023 (decision # 143237). Claimant filed a timely request for hearing. On March 16, 2023, the Office of Administrative Hearings (OAH) served a notice of hearing scheduled for March 29, 2023 at 3:30 p.m. On March 29, 2023, ALJ Sachet-Rung conducted a hearing at which the employer failed to appear, and on March 30, 2023, issued Order No. 23-UI-220614, reversing decision # 143237 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On April 17, 2023, the employer filed a timely request to reopen the hearing. On May 16 and 18, 2023, ALJ Ramey conducted a hearing. On May 26, 2023, ALJ Ramey issued Order No. 23-UI-226198, allowing the employer's request to reopen, and again reversing decision # 143237 by concluding that claimant was discharged, but not for misconduct, and was not disqualified from receiving benefits based on the work separation. On June 15, 2023, the employer filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** The employer did not declare that they provided a copy of their argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019). The argument also contained information that was not part of the hearing record, and did not show that factors or circumstances beyond the employer's reasonable control prevented them from offering the information during the hearing as required by OAR 471-041-0090 (May 13, 2019). EAB considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

However, it is warranted to address a point the employer raised in their written argument relating to an evidentiary ruling made by the ALJ. At the end of the hearing on May 18, 2023, the employer's owner offered a set of documents, including an employment agreement signed by claimant, for the purpose of showing that claimant had received them, which the owner believed would contradict claimant's testimony offered during the May 16, 2023 hearing session, and thereby undermine her credibility. May

18, 2023 Audio Record at 3:30 to 6:02. The ALJ stated that the owner had already testified to the existence of the employment agreement, so admitting the agreement would be repetitive, but claimant could testify about the agreement and other documents, although the ALJ would not admit the documents into evidence to consider for purposes of claimant's veracity. May 18, 2023 Audio Record at 3:50; 5:25 to 6:02. In the employer's written argument, the employer contended that the ALJ erred in not admitting the documents, again raising that the purpose of offering the documents were to undermine claimant's credibility by establishing claimant's "pattern of lying under oath." Written Argument at 1.

Review of claimant's testimony during the May 16, 2023 hearing session does not show that claimant squarely denied receiving the employment agreement or other documents. The relevant testimony was as follows:

Q: Were you aware of that employment agreement?

A: I signed a – an offer letter, and I got a l – I don't have a few – I got one page offer letter and I got employee handbook. That's all I know –

Q: Okay.

A: - and I signed the employee handbook. I read the employee handbook. I don't have a problem with any of that.

May 16, 2023 Transcript at 48-49. It is possible to interpret this testimony, particularly claimant's statement, "That's all I know" as conveying that claimant remembered only the offer letter and handbook, not that claimant was intending to specifically deny having ever received the employment agreement or other documents. Indeed, during the May 18, 2023 hearing session, the owner asked claimant whether she recalled signing the agreement and claimant responded, "No, I don't recall[.]" May 18, 2023 Transcript at 8. Again, this is consistent with a lack of memory rather than a specific denial of ever having received the document.

Thus, the offered documents, when considered in combination with claimant's testimony, do not establish that claimant testified falsely, because claimant's testimony is better construed as a lack of recollection rather than a denial. The documents therefore were of limited evidentiary value when offered for the purpose of undermining claimant's credibility. Accordingly, to the extent, if any, the ALJ erred in failing to admit the documents into evidence, the error was harmless because it did not substantially prejudice the employer's rights. *See* OAR 471-040-0025(5) ("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.") (effective August 1, 2004).

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. 23-UI-226198 is affirmed.

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

**DATE of Service:** July 26, 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](https://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 desisyong.

## 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**

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**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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