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

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<p><b>EMPLOYMENT APPEALS BOARD DECISION</b> <b>2014-EAB-0216-R</b></p>
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*Request for Reconsideration Denied*

**PROCEDURAL HISTORY:** On November 4, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 100304). Claimant filed a timely request for hearing. On January 16, 2014, ALJ Micheletti conducted a hearing, and on January 23, 2014, issued Hearing Decision 14-UI-08997, concluding the employer discharged claimant but not for misconduct. On January 29, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

On February 27, 2014, EAB issued Appeals Board Decision 2014-EAB-0216 in which it affirmed the Hearing Decision under review. On March 6, 2014, the employer filed a request for reconsideration.

**CONCLUSIONS AND REASONS:** The employer's request for reconsideration is denied.

The employer's request for reconsideration included information that was not part of the hearing record. The employer failed to show that factors or circumstances beyond the employer's reasonable control prevented the employer from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

OAR 471-041-0145(1) (October 29, 2006) provides that a party may request reconsideration to correct a material error of fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice. The employer requests reconsideration because when it submitted the application for review, it "was unaware that I was to submit my written argument at that time. I thought I would receive a date for another hearing and then submit my written argument." Claimant's understanding of the rules applicable to EAB's consideration of an application for review is incorrect.

On February 4, 2014, EAB mailed the employer and claimant a “Notice of Receipt of Application for Review” which acknowledged receipt of the employer’s application for review and explained that EAB will review the case record and issue a decision, usually within a few weeks. This notice also explained that parties may submit written argument, and quotes the entire text of the applicable rule, OAR 471-041-0080 (October 29, 2006). OAR 471-041-0080(1) provides that a party may submit a written argument within 20 days of the date that EAB mails or emails a notice acknowledging receipt of an application for review.

The employer was thus clearly informed of the procedure to be followed if it wished to submit written argument in support of its application for review. Our actions in processing the employer’s application for review were consistent with Employment Department rules and we have no reason to reconsider our decision. Accordingly, the employer’s request for reconsideration is denied.

**DECISION:** The request for reconsideration filed application for review filed March 6, 2014 is denied. Hearing Decision 14-UI-08997 remains undisturbed.

Susan Rossiter and Tony Corcoran;  
D. E. Larson, not participating.

**DATE of Service:** March 12, 2014

**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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.