

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0300

*Affirmed
No Disqualification*

PROCEDURAL HISTORY: On December 4, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision #140755). Claimant filed a timely request for hearing. On February 4, 2014, ALJ Shoemake conducted a hearing at which the employer failed to appear, and on February 6, 2014 issued Hearing Decision 14-UI-09947, concluding that the employer discharged claimant but not for misconduct. On February 19, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer states that it did not appear at the hearing because it “did not receive the mail about this hearing.” The employer’s complaint is construed as a request to have EAB consider additional evidence under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. OAH mailed the notice of hearing to: 4845 NE Mill Creek Rd, Prineville, OR 97754-7913 which was and is the employer’s address of record with the Department. Documents sent through the U.S. Postal Service are presumed to have been received by the addressee, subject to evidence to the contrary. OAR 137-003-0520(10) (January 31, 2012). The employer offered no evidence, such as problems with mail service or delivery, that would rebut the presumption that the hearing notice was received. Accordingly, the employer’s request to consider new information under OAR 471-041-0090 is denied.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 14-UI-09947 is affirmed.

EAB Decision 2014-EAB-0300

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

DATE of Service: March 4, 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.