

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0582

Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 17, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision #93530). Claimant filed a timely request for hearing. On March 20, 2014, ALJ Holmes-Swanson conducted a hearing in which the employer did not participate, and on March 26, 2014, issued Hearing Decision 14-UI-13468, concluding that the employer discharged claimant but not for misconduct. On April 9, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer challenged the conclusions reached by the ALJ, and offered new information regarding the claimant's work separation that he asks EAB to consider. EAB may consider new information under OAR 471-041-0090 (October 29, 2006), if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. In support of its request, the employer asserts that it intended to appear at the hearing, but "had to return home while on my way to work for personal reasons and was unable to arrive at the worksite until well after the start time of the scheduled hearing which was at 8:15 a.m." The employer provides no other details regarding the "personal reasons" that delayed his arrival at work. Without supporting details, we have no basis to conclude that any circumstances beyond the employer's reasonable control prevented it from attending the hearing and presenting the information it now asks EAB to consider. Accordingly, the request to present new information is denied.¹

¹ In its application for review, the employer objects to the ALJ's admission of Exhibit 1 on the basis that it never received a copy of the exhibit. In Hearing Decision 14-UI-13468, the ALJ held the record open to receive additional documents. The documents were received, marked as Exhibit 1, and attached to the decision. The ALJ stated that any party wishing to object to the admission of Exhibit 1, "must do so by mailing or faxing the objection to the Office of Administrative Hearings, within seven (7) days of this Order. A copy of the objection must also be served on the other parties to this case. If no objection is received timely, or if any objection is overruled, the additional Exhibit will be admitted into evidence." Because the employer failed to make a timely objection to the admission of Exhibit 1 in accordance with the ALJ's instructions, the ALJ did not err in admitting the exhibit into evidence.

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-13468 is affirmed.

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

DATE of Service: April 24, 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.