

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0646

Affirmed
No Disqualification

PROCEDURAL HISTORY: On February 14, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 104756). Claimant filed a timely request for hearing. On March 25, 2014, ALJ Holmes-Swanson conducted a hearing in which the employer did not participate, and on March 26, 2014, issued Hearing Decision 14-UI-13478, concluding that the employer discharged claimant but not for misconduct. On April 15, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer's CEO requested "another hearing," asserting that he was unable to appear at the hearing because "I did not receive any notice or paperwork regarding the hearing." The employer's request is considered as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not part of the hearing record if the party offering the information shows that it was prevented by circumstances beyond its reasonable control from presenting the information at hearing. In support of its request, the employer's CEO stated that because the "documents were not sent by certified mail I'm not sure what happened in the delivery of the [hearing] notice."

The record shows that Office of Administrative Hearing mailed the notice of hearing to 547 SW 13th St, Ste 3, Bend OR 97702-3171, which was and is the employer's address of record with the Department. Documents sent through the US Postal Service are presumed to have been received by the addressee, subject to evidence to the contrary. OAR 137-003-0520 (January 31, 2012). The employer has presented no evidence to overcome this presumption of delivery. Thus, it failed to demonstrate that circumstances beyond its reasonable control prevented it from participating in the hearing and offering evidence regarding the claimant's work separation. Accordingly, the employer's request to present new information 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-13478 is affirmed.

Susan Rossiter, Tony Corcoran and J.S. Cromwell, *pro tempore*;
D. E. Larson, not participating.

DATE of Service: May 1, 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.