

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0648

Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 6, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 114427). Claimant filed a timely request for hearing. On March 6, 2014, ALJ Menegat conducted a hearing in which the employer did not participate, and on March 12, 2014, issued Hearing Decision 14-UI-12179, concluding that claimant voluntarily left work with good cause. On April 1, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer's representative, ADP, asks for a new hearing on the grounds that the employer's "first hand witness" was unable to participate in the hearing because the witness "was on an airplane at the time of the hearing." According to the employer's representative, this witness had "crucial first hand testimony regarding conversations" with claimant. ADP notes that it had unsuccessfully requested a postponement of the hearing by letter dated March 5, 2014. The employer's request is construed as a request to have EAB consider new information 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.

The employer's argument is that that OAH's denial of its request for postponement was arbitrary, and amounted to a circumstance beyond its reasonable control that prevented it from appearing at the hearing. We agree that OAH's denial of the employer's request for postponement appears to have been arbitrary. The only mention of the postponement request is a notation in the file that the request was received on March 6, 2014 and denied; the record is devoid of any information as to when or why the request was denied. Nothing prevented the ADP from appearing on March 6 to renew its postponement request, or offer testimony in support of the request, however. ADP simply chose not to do so because a witness was unavailable. Because ADP was not prevented from appearing at the hearing on behalf of

the employer, it failed to show that circumstances beyond its reasonable control prevented it from presenting the information it now asks us to consider. Accordingly, the 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-12179 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.