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

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EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0666

Affirmed
Late Request to Reopen Dismissed

PROCEDURAL HISTORY: On January 16, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 173218). The employer filed a timely request for hearing. On March 5, 2014, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for March 20, 2014 at 8:15 a.m. On March 20, 2014, ALJ Vincent conducted a hearing at which claimant failed to appear, and on March 21, 2014, issued Hearing Decision 14-UI-13116, concluding the employer discharged claimant for misconduct. On April 10, 2014, Hearing Decision 14-UI-13116 became final without a request to reopen or an application for review having been filed. On April 11, 2014, claimant filed a late request to reopen the hearing. ALJ Kangas reviewed claimant's late request to reopen and on April 15, 2014, issued Hearing Decision 14-UI-15145, denying claimant's request. On April 22, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review, claimant included information that was not part of the hearing record. Under OAR 471-041-0090 (October 29, 2006), EAB may consider information not received into evidence at the hearing only if the party offering the evidence shows that it was prevented by circumstances beyond the party's control from presenting the information at the hearing. Claimant states that she failed to appear at the hearing "because I didn't know this type of thing existed." Claimant also asserts that she "was told by Administrative hearing office I should have been notified by mail. Indeed I was, but it was unopened mail." Claimant failed to demonstrate that circumstances beyond her control prevented her from attending the hearing. The January 16 administrative decision she received explained how claimant could request a hearing if she disagreed with the decision, and included a form claimant could use to request a hearing. In regard to the hearing notice claimant received, she fails to explain why it was "unopened." Because claimant did not satisfy the requirements for presenting new information in OAR 471-041-0090, we did not consider it.

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-15145 is affirmed.

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

DATE of Service: May 5, 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.