

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0704

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 6, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 94808). Claimant filed a timely request for hearing. On April 11, 2014, ALJ Murdock conducted a hearing in which the employer did not participate, and issued Hearing Decision 14-UI-14974, concluding that the employer discharged claimant but not for misconduct. On April 28, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) The employer's address of record with the Department was, and is, Thomas & Thorngren For: Applebee's Neighborhood Grill-Bar, PO Box 280100, Nashville TN 37228-010. On March 26, 2014, the Office of Administrative Hearings (OAH) mailed the notice of hearing to this address.

(2) The application for review was filed on behalf of Applebees Neighborhood Grill by Barnett and Associates, 61 Hilton Avenue, Garden City NY 11530.

**CONCLUSIONS AND REASONS:** In its application for review, the employer's representative asks for a new hearing because "[w]e never received the hearing notice." The employer's request is construed as a request to have EAB consider additional evidence 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 it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. The record shows that the hearing notice was mailed to the employer's address of record as required by OAR 471-040-0015(1) (August 1, 20014).<sup>1</sup> Although the employer apparently changed its authorized representative, OAH was never notified of any such change. It was

<sup>1</sup> OAR 471-040-0015(1) provides that notice of hearing "shall be personally delivered or mailed at least five days in advance of the hearing to parties or their authorized agents at their last known address as shown by the record of the Director."

within the reasonable control of the employer or its representative to notify OAH of a change of authorized representative. The employer's request to have EAB consider new information is, therefore, 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-14974 is affirmed.

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

**DATE of Service:** May 7, 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.