

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0754

Affirmed
No Disqualification

PROCEDURAL HISTORY: On October 21, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 91621). Claimant filed a timely request for hearing. On January 17, 2014, ALJ Sime issued Hearing Decision 14-UI-0882, dismissing claimant's request for hearing for failure to appear. On January 27, 2014, claimant filed a request to reopen his hearing. On April 4, 2014, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for April 21, 2014 at 9:30 a.m. On April 21, 2014, ALJ Davis conducted a hearing at which the employer failed to appear, and on April 29, 2014 issued Hearing Decision 14-UI-16331, allowing claimant's request to reopen and concluding the employer was discharged but not for misconduct. On May 5, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer's request for relief is construed as a request to have EAB consider additional evidence 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 argues that he received two copies of a hearing notice and did not thoroughly read the notice of hearing. It was within the employer's reasonable control to carefully read the hearing notices he received. Accordingly, the employer's request to have EAB consider additional evidence must be denied. In addition, the employer failed to certify that a copy of the written argument was provided to the other parties as required by OAR 471-041-0080(2)(a). Accordingly, we did not consider the employer's written argument in reaching this decision.

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-16331 is affirmed.

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

DATE of Service: May 19, 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.