

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0758

Affirmed
No Disqualification

PROCEDURAL HISTORY: On January 31, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 112302). Claimant filed a timely request for hearing. On April 10, 2014, the Office of Administrative Hearings (OAH) issued a notice for a hearing scheduled for April 24, 2014, at 1:30 p.m. On April 22, 2014, the employer's representative, Equifax, requested a postponement, which OAH denied.

On April 24, 2014, ALJ Seideman conducted a hearing at which the employer and its representative did not appear, and on April 25, 2014, issued Hearing Decision 14-UI-16172, concluding the employer discharged claimant but not for misconduct. On May 5, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer's representative includes a request that the hearing be reopened because the employer's witness "was unable to participate in the hearing due to he was already scheduled to attend a mandatory all employee training program that was scheduled on the day of this hearing from 1:00 pm thru 3:00 pm." The employer's representative notes that it had requested a postponement for the hearing, but the request was denied. The employer's request for a new hearing 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 record shows that on April 22, 2014, the employer's representative submitted to OAH a request that the hearing be postponed because the employer's witness was unavailable on April 24, 2014 because he was required to participate in a training program from 1 to 3 p.m. on the day of the hearing.¹

Under OAR 471-040-0021(2), OAH may grant a postponement if the request is made promptly after the party learns of the need for the postponement, and good cause is shown for the postponement. The employer has failed to demonstrate that the postponement request was made promptly after it learned of the need to postpone the hearing. The hearing notice was mailed to the parties 14 days before the date of the hearing. It seems improbable that the employer realized only two days before the hearing that an important witness was participating in a training session, and would be unavailable to testify. Accordingly, the employer failed to demonstrate that circumstances beyond its reasonable control prevented it from presenting information at the hearing. 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-16172 is affirmed.

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

DATE of Service: May 22, 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.

¹ We admit the employer representative's letter into evidence in this case as EAB Exhibit 1. OAR 471-041-0090(2) (October 29, 2006). A copy of Exhibit 1 is attached to this decision. Any party that objects to our admission of this exhibit may submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of the date on which this decision is mailed. Unless an objection is received and sustained, the exhibit will remain.