

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0792

Affirmed
No Disqualification

PROCEDURAL HISTORY: On April 4, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the claimant voluntarily left work without good cause (decision # 111331). Claimant filed a timely request for hearing. On May 1, 2014, ALJ Wipperman conducted a hearing at which the employer failed to appear, and issued Hearing Decision 14-UI-16552, concluding that the employer discharged claimant but not for misconduct. On May 6, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

In its written argument, the employer asked for a new hearing on the grounds that it 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 new information if the party presenting the information shows that it was prevented by circumstances beyond its reasonable control from offering the information at the hearing.

OAH mailed the notice of hearing to 4723 Horizon Way, Florence, OR 97439, which was and is the employer's address of record with the Department. Documents sent through the US Postal Service are presumed to have been received by the addressee, subject to evidence to the contrary. OAR 137-003-0520 (January 31, 2012). The employer provided no evidence regarding circumstances that might have resulted in non-delivery of the hearing notice, other than the assertion that it never received the hearing notice. The employer's statement alone is insufficient evidence to rebut the presumption that the hearing notice was received by the employer. Accordingly, we cannot conclude that lack of notice of the hearing was a circumstance beyond the employer's reasonable control. 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-16552 is affirmed.

Susan Rossiter and Tony Corcoran;
D. E. Larson and J. S. Cromwell, *pro tempore*, 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.