

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0829

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 30, 2013, the Oregon Employment Department (the Department) served notice of two administrative decision: decision #145457 concluded that the employer suspended claimant but not for misconduct and decision #143435 concluded that the employer discharged claimant for misconduct. On January 21, 2014, both administrative decisions became final without a request for hearing having been filed. On February 27, 2014, claimant filed a late request for hearing. On March 5, 2014, ALJ Kangas issued Hearing Decision 14-UI-11667, dismissing claimant's request for hearing as untimely, subject to claimant's "right to renew" the request by submitting a response to the "Appellant Questionnaire" attached to the hearing decision within 14 days of the date the decision was mailed.¹ On March 14, 2014, the Office of Administrative Hearings received claimant's response. On April 8, 2014, the Office of Administrative Hearings (OAH) issued a letter entitled "Cancellation of Hearing Decision," cancelling and vacating Hearing Decision 14-UI-11667, and notifying the parties that a hearing would be scheduled. Also on April 8, 2014, OAH issued notice of a hearing scheduled for April 23, 2014. On April 23, 2014, ALJ Davis conducted a hearing in which the employer did not participate, and on April 28, 2014, issued Hearing Decision 14-UI-16269, concluding that claimant's hearing request was timely filed and that the employer discharged claimant but not for misconduct. On May 14, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer's representative included a request that the hearing be reopened because the employer's "first hand witness was facilitating a training class and unavailable for the hearing." The employer's representative noted 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.

¹ Hearing Decision 14-UI-11667.

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 "first hand" witness was conducting a training class at the time of the hearing. 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 15 days before the date of the hearing. It seems improbable that the employer realized only one day before the hearing that an important witness was conducting a training class 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-16269 is affirmed.

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