

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0870

Affirmed
Ineligible

PROCEDURAL HISTORY: On March 25, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not fail to accept an offer of suitable work without good cause (decision # 155458). The employer filed a timely request for hearing. On April 9, 2014, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for April 23, 2014 at 1:30 p.m. On April 23, 2014, ALJ R. Davis conducted a hearing at which claimant failed to appear, and on May 1, 2014, issued Hearing Decision 14-UI-16668, concluding claimant failed to accept an offer of suitable work without good cause. On May 16, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

In his written argument, claimant stated that he failed to appear at the April 23, 2014 hearing because he did not receive the hearing notice. Claimant argued, “[I] didn’t get anything in the mail saying I had a hearing therefore I didn’t know there was a hearing.” Claimant’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 442 NE 148th Ave., Portland, Oregon 97230, which was and is claimant’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). Claimant provided no evidence to support non-delivery of the notice of hearing, other than the assertion that he never received the notice. Claimant’s bare statement alone is insufficient evidence to rebut the presumption that the notice of hearing was received by claimant. Therefore, we cannot conclude that the lack of notice of hearing was a circumstance beyond claimant’s reasonable control that prevented him from presenting evidence at the hearing. Claimant’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-16668 is affirmed.

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

DATE of Service: May 27, 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.