

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0889

Affirmed
No Disqualification

PROCEDURAL HISTORY: On April 4, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 93117). Claimant filed a timely request for hearing. On April 25, 2014, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for May 7, 2014 at 12:00 p.m. On May 7, 2014 ALJ Micheletti conducted a hearing at which the employer failed to appear, and on May 8, 2014, issued Hearing Decision 14-UI-17066, concluding the employer discharged claimant but not for misconduct. On May 21, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

In its written argument, the employer's representative requested a new hearing asserting that the employer's witness "was unable to attend due to a meeting prior to the hearing." 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 of the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. The unavailability of the employer's witness might have constituted a circumstance beyond its control that prevented the employer from presenting information at the hearing. The record is devoid of evidence, however, that the employer contacted OAH in advance of the hearing to request a postponement. In addition, the employer failed to explain why its representative was unable to appear at the hearing and request a continuance to a later date to allow the witness to testify. The request to present 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-17066 is affirmed.

Susan Rossiter and J. S. Cromwell,
Tony Corcoran, not participating.

DATE of Service: June 5, 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.