

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0945

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, not for misconduct (decision # 121142). The employer filed a timely request for hearing. On May 8, 2014, ALJ Monroe conducted a hearing, and on May 12, 2014 issued Hearing Decision 14-UI-17404, affirming the Department's decision. On June 2, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

In written argument, the employer asked EAB to consider new information showing that claimant started a competing business, which he registered with the Oregon Business Registry on April 21, 2014, and for which he obtained an Oregon Construction Contractors Board (CCB) license on May 9, 2014. OAR 471-041-0090 (October 29, 2006) allows EAB to consider new when the party offering the information establishes that the new information is relevant and material to EAB's determination, and that factors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing. However, the fact that claimant was planning to quit working for the employer to start his own business when the employer discharged him on March 18, 2014 for allegedly performing "side work" for his own benefit is not new information. *See* Transcript at 11. The employer did not assert or show that factors or circumstances beyond its reasonable control prevented it from offering the information that claimant registered his business on April 21, 2014 into evidence at the May 8, 2014 hearing. Nor is the information that claimant registered and obtained a CCB license for his business in late April and early May 2014 material to whether claimant was performing side work for his own benefit when the employer discharged him over one month earlier. The employer's request for EAB to consider its new information therefore 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-17404 is affirmed.

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

DATE of Service: July 9, 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 court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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