

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1024

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On May 16, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for committing a disqualifying act (decision # 100837). The employer filed a timely request for hearing. On May 27, 2014, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for June 10, 2014. On June 10, 2014, ALJ Kirkwood conducted a hearing in which the claimant did not participate, and on June 11, 2014, issued Hearing Decision 14-UI-19397, concluding the employer discharged claimant for committing a disqualifying act. On June 12, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

With his written argument, claimant asks for a new hearing, explaining that he missed the hearing because he no notice of it. Claimant states that “I still haven’t found the mailing by today (Friday) of when the hearing would be and I am tearing my house apart.” Claimant also included with his written argument an explanation of the circumstances that led to his discharge.

Claimant’s request is construed as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not part of the hearing record if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. Documents sent through the U.S. Postal service are presumed to have been received by the addressee, subject to evidence to the contrary. OAR 137-003-0520 (January 31, 2013). OAH mailed the notice of hearing to claimant’s address of record with the Department, which claimant agrees is correct. Claimant has provided no evidence of circumstances – such as previous problems in receiving his mail – that would tend to rebut the presumption that he received the hearing notice. To the contrary, claimant’s statement indicates that he believes he did receive the hearing notice and misplaced it. Accordingly, claimant has failed to demonstrate that circumstances beyond his control prevented him from participating in the hearing and offering the information he asks EAB to consider. Claimant’s request to present new information is denied.

DECISION: Hearing Decision 14-UI-19397 is affirmed.

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

DATE of Service: June 30, 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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