

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1139

*Adopted
No Disqualification*

PROCEDURAL HISTORY: On May 28, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 165037). Claimant filed a timely request for hearing. On June 16, 2014, ALJ M. Davis conducted a hearing in which the employer did not participate, and issued Hearing Decision 14-UI-19700, concluding the employer discharged claimant not for misconduct. On July 2, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer's representative, who is a doctor or chiropracty, asked to reopen the hearing to present evidence regarding the claimant's work separation. The employer's request for relief is construed as a request to have EAB consider new evidence 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 hearing. In support of his request, the employer's representative explained:

I was not able to attend the phone hearing due to being detained with a patient who was scheduled at 9:15 AM., and to be finished by 9:30 AM. When the patient presented for care, she presented to the clinic with a new chief complaint which was not mentioned when scheduling. Due to the patient's status, the regular scheduled treatment appointment with the patient ran past the scheduled time.

The employer's representative failed to explain why he could not re-schedule the patient once he realized the patient had a new "chief complaint," or why he could not excuse himself from the patient appointment at 9:30 a.m. to phone in for the hearing and request a postponement. Accordingly, the employer's representative failed to show that circumstances beyond his reasonable control prevented him from participating in the hearing. The employer's 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-19700 is affirmed.

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

DATE of Service: July 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 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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