

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1247

*Affirmed
No Disqualification*

PROCEDURAL HISTORY: On June 12, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 115315). Claimant filed a timely request for hearing. On June 24, 2014, the Office of Administrative Hearings issued notice of a hearing scheduled for July 7, 2014, at 3:30 p.m. On July 7, 2014, ALJ Frank conducted a hearing in which the employer did not participate, and on July 11, 2014, issued Hearing Decision 14-UI-21384, concluding that the employer discharged claimant not for misconduct. On July 16, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for reviewer, the employer's representative asks that the hearing be reopened so that it can present evidence regarding the work separation at issue. The employer's representative asserts that it failed to participate in the hearing because it did not receive the hearing notice until July 11, 2014. The employer's request 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 the hearing. The employer's representative provided no details regarding its late receipt of the hearing notice, e.g., how the hearing notice was received, what were the office hours for the employer's representative, when the mail was delivered to the employer's representative, and how the mail was processed. Without supporting details, we have no basis on which to conclude that the employer's lack of notice of the hearing was a circumstance beyond its reasonable control. Accordingly, 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-21384 is affirmed.

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

DATE of Service: July 31, 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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