

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1332

Affirmed
Request to Reopen Dismissed

PROCEDURAL HISTORY: On January 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 81044). The employer filed a timely request for hearing. On February 28, 2014, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for March 14, 2014 at 3:30 p.m. On March 17, 2014, ALJ L. Lohr issued Hearing Decision 14-UI-12589, dismissing the employer's request for hearing for failure to appear. On March 31, 2014, the employer filed a timely request to reopen. On May 29, 2014, OAH issued notice of a hearing scheduled for June 12, 2014 at 10:45 a.m. On June 13, 2014, ALJ R. Davis issued Hearing Decision 14-UI-19528, denying the employer's request to reopen the hearing for failure to appear. On July 1, 2014, the employer filed a timely request to reopen.

On July 24, 2014, ALJ Kangas reviewed the employer's request to reopen and issued Hearing Decision 14-UI-22169, dismissing the employer's request. On August 11, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer's representative submitted a written argument requesting to reopen Hearing Decision 14-UI-22169, asserting that the employer's witness "was unfortunately at the hospital due to a family emergency." In light of that assertion, we construe the employer's request as a request for EAB to consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party offering the information shows it as prevented by circumstances beyond its reasonable control from presenting the information at the hearing. The employer is a corporation, and did not state the nature of the witness' emergency, assert or show that it could not have requested a postponement of the hearing, or designate another representative to appear at the hearing. Absent such showings, the employer failed to establish that it was prevented by circumstances beyond its reasonable control from presenting its information. Additionally, the employer failed to certify that it provided a

copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

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-22169 is affirmed.

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

DATE of Service: August 20, 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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