

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1460

*Adopted
Disqualification*

PROCEDURAL HISTORY: On July 10, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 155536). Claimant filed a timely request for hearing. On August 4, 2014, the Office of Administrative Hearings issued notice of a hearing scheduled for August 18, 2014 at 9:30 a.m. On August 18, 2014, ALJ Shoemake conducted a hearing in which the claimant did not participate, and on August 22, 2014, issued Hearing Decision 14-UI-23961, concluding that the employer discharged claimant for misconduct. On September 8, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

In his application for review, claimant asserted that he failed to appear for the August 18, 2014 hearing “because I was out of town for work with my new job with Puddle Jumper towing. I did not receive the letter about the hearing until two days after.” Included with claimant’s application for review is a letter from the owner of Puddle Jumper Towing, Recovery and Auto Transport, in which the owner states that claimant was required by the company “to be on duty, onsite and available to perform tow duties” at a music festival in Brownsville, Oregon from August 14 through August 18, 2014.

Claimant’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.

To the extent that claimant’s failure to appear resulted from his late receipt of the hearing notice, claimant has not provided any details, such as past problems he has experienced with his mail, to support his assertion. To the extent that claimant’s failure to appear resulted from his out of town work assignment, claimant has not explained how his work prevented him from calling in for the hearing or

requesting a postponement.¹ Accordingly, claimant did not demonstrate that circumstances beyond his reasonable control prevented him from appearing at the hearing, and his 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-23961 is affirmed.

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

DATE of Service: September 18, 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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¹ We note that the hearing notice was mailed to claimant on August 4, 2014 – 10 days before the date on which his out of town work assignment began.