

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1810

*Affirmed
No Disqualification*

PROCEDURAL HISTORY: On October 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 90852). Claimant filed a timely request for hearing. On November 17, 2014, ALJ Shoemake conducted a hearing in which the employer did not participate, and on November 18, 2014 issued Hearing Decision 14-UI-28998, concluding that the employer discharged claimant, but not for misconduct. On November 25, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer's owner asked for a new hearing, asserting that he was unable to attend the November 17 hearing because

“[d]ue to weather related problems, a family member needed immediate consultation regarding the salvage, debris removal and remodel to repair areas of their home that were impacted by weather issues. I was unable to get to a phone in time for the telephone hearing as I was meeting with 4 different trade contractors to go over remediation activities that were about to take place in their residence.”

The employer's request for relief is construed as a request to have EAB consider additional 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 offering the information at the hearing. The employer's owner fails to explain why he was unable to postpone or reschedule the meetings with contractors that prevented him from calling in to the November 17 hearing, to either participate or request a postponement. Without such an explanation, we have insufficient information to conclude that the failure of the employer's owner to appear at the hearing was a circumstance beyond his 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-28998 is affirmed.

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

DATE of Service: December 19, 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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