

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1926

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On November 18, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 145718). Claimant filed a timely request for hearing. On December 17, 2014, ALJ Triana conducted a hearing in which the employer did not participate, and on December 18, 2014, issued Hearing Decision 14-UI-30595, concluding that the employer discharged claimant, but not for misconduct. On December 22, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, one of the employer's owners asked to reopen the hearing. In support of his request, the owner explained that "I was unable to call at 9:30 am for the hearing as that morning my AM Sous Chef called in sick for work and I was required to cover his shift for the kitchen." The owner also explained that he was the only person qualified to participate in the hearing. The employer's request is treated as a request to have EAB consider new evidence under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. The owner failed to explain specifically why his sous chef duties prevented him from contacting the Office of Administrative Hearings (OAH) to request a postponement of the hearing, or why another owner (who also signed the request to reopen) was unable to contact OAH and request a postponement. Without such explanations, we have no reason to conclude that the circumstances beyond its reasonable control prevented it from presenting information at a hearing. 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-30595 is affirmed.

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

**DATE of Service: December 29, 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](http://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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