

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1943

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On November 5, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 73605). The employer filed a timely request for hearing. On November 25, 2014, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for December 10, 2014. On December 10, 2014, ALJ Frank conducted a hearing in which claimant did not participate, and on December 12, 2014 issued Hearing Decision 14-UI-30307, concluding the employer discharged claimant for misconduct. On December 23, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

On his application for review, claimant provided the following statement: “I was very sick with no voice for 2 days, 12/9/14 – 12/10/14 [sic] was not able to communicate over the phone on day of hearing. I request to reopen claim.” Claimant’s request 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 presenting the information at the hearing. Claimant failed to explain why he was unable to arrange for a friend or relative to contact OAH to ask for a postponement because of claimant’s inability to speak, or why claimant was unable to send a request for postponement to OAH by fax.¹ Without such an explanation, we have no reason to conclude that claimant’s failure to participate in the December 10, 2014 hearing was due to circumstances beyond his reasonable control. Accordingly, claimant’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-30307 is affirmed.

¹ The November 25, 2014 Notice of Hearing contains a telephone and fax number for OAH.

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

DATE of Service: December 30, 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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