

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0160

Affirmed
No Disqualification
Benefits Allowed in Part, Denied in Part

PROCEDURAL HISTORY: On January 8, 2015, the Oregon Employment Department (the Department) served notice of two administrative decisions: decision # 141129 concluded that claimant was not able to or available for work from October 26, 2014 through November 1, 2014 (week 44-14); and decision #135145 concluded that claimant voluntarily left work without good cause. Claimant filed a timely request for hearing on both decisions. On February 9, 2015, ALJ M. Davis conducted a hearing in which the employer did not participate, and on February 11, 2015 issued two Hearing Decisions: Hearing Decision 15-UI-33390 concluded that the employer discharged claimant, but not for misconduct; and Hearing Decision 15-UI-33392 concluded that claimant was not able to or available for work from October 26 through November 8, 2014 (weeks 44-14 through 45-14) but was able to and available for work from November 9, 2014 through January 10, 2014 (weeks 46-14 through 01-15). On February 18, 2015, the employer filed an application for review of Hearing Decision 15-UI-33390 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-33390 and 15-UI-33392. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-0158 and 2015-EAB-0160).

With the application for review, the employer's owner included a letter in which he apologized for his failure to participate in the hearing, explaining that he

“was not aware that it was scheduled to happen. The reason I didn't know about it was because I am the sole owner of these locations and on December 24th, 2014 my wife was admitted to the hospital due to a severe ruptured appendix. She was not released from the hospital until January 21st 2015 almost 29 days later. We have three young children with no one to watch them so I was forced to work from home which prohibited me from being able to efficiently manage our business.”

The owner's letter is construed as a request to have EAB consider additional evidence under OAR 471-041-0090 (October 26, 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.

In his letter, the owner asserted that because he was working at home after his wife's release from the hospital on January 29, 2015, he was unaware of the hearing scheduled for February 9, 2015. Although the owner contended that he was unable "to efficiently manage our business" while he was working at home, he never claimed that he did not receive notice of the February 9 hearing. The owner also provided no other details, e.g., what arrangements (if any) he made to have mail sent to his workplace forwarded to his home address, and whether he experienced any problems with his mail as a result of these arrangements. Without these details, we have no reason to conclude that the owner's lack of notice was a circumstance beyond his reasonable control. Accordingly, the employer's request to consider new information under OAR 471-041-0090 is denied.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decisions under review are **adopted**.

DECISION: Hearing Decisions 15-UI-33390 and 15-UI-33392 are affirmed.

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

DATE of Service: March 2, 2015

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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