

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0181

*Adopted
No Disqualification*

PROCEDURAL HISTORY: On December 29, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 74810). Claimant filed a timely request for hearing. On February 9, 2015, ALJ Shoemake conducted a hearing in which the employer did not participate, and issued Hearing Decision 15-UI-33178, concluding that the employer discharged claimant, but not for misconduct. On February 17, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer's representative explained the reasons why it discharged claimant and apologized for the employer's failure to participate in the hearing. The employer's representative stated that "I was involved with an unexpected employee issue. It was in the best interest and wellbeing of the employee I was speaking with to assist them at the time of the hearing." Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information if the party offering the information demonstrates that circumstances beyond the party's reasonable control prevented it from presenting the information at the hearing. The employer's representative provided no details about the "unexpected employee issue," and offered no explanation why it prevented her (or another employer representative) from calling into the hearing to request a continuance. Without such information, we have no reason to conclude that circumstances beyond its reasonable control prevented the employer from participating in the hearing and presenting the information it now asks EAB to consider. The employer's request to present new evidence 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 15-UI-33178 is affirmed.

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

DATE of Service: March 10, 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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