

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0230**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On December 31, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 134048). Claimant filed a timely request for hearing. On January 28, 2015, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for February 12, 2015. On February 12, 2015, ALJ Monroe conducted a hearing in which the employer did not participate, and issued Hearing Decision 15-UI-33494, concluding that the employer discharged claimant, but not for misconduct. On March 2, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer's representative included evidence regarding the reasons for claimant's discharge and explained that the employer did not participate in the hearing because of a "scheduling mistake." 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 "scheduling mistake" that resulted in its failure to appear at the hearing. 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.<sup>1</sup>

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<sup>1</sup> The employer's representative included the letter in which the employer discharged claimant in the application for review. The employer's representative questions why the ALJ did not include any facts contained in this letter in the Findings of Fact in Hearing Decision 15-UI-33494 "since the dismissal letter was provided to Unemployment Insurance Division [sic]." We note that the Notice of Hearing sent to the employer on January 28, 2015 states that documents a party wants to use in the hearing must be immediately provided to the ALJ and the other parties and that "[i]f you do not provide the documents before the hearing, they may not be considered by the ALJ." Notice of Hearing, p. 6.

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-33494 is affirmed.

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

**DATE of Service:** March 11, 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 Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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