

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0389

Affirmed
No Disqualification
Overpayment Not Assessed, No Penalty Weeks

PROCEDURAL HISTORY: On February 26, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 123251). On March 10, 2015, the Department served notice of an administrative decision (#201762) concluding that claimant willfully made a misrepresentation to obtain benefits, and assessing a \$1,955 overpayment, \$293.25 in monetary penalties and 15 penalty weeks, based on decision #123251. Claimant filed timely hearing requests on both decisions. On March 27, 2015, ALJ Holmes-Swanson conducted a hearing on the discharge decision (# 123251) in which the employer did not participate, and on March 30, 2015, issued Hearing Decision 15-UI-35962, concluding that the employer discharged claimant, but not for misconduct. On April 3, 2015, ALJ Wyatt conducted a hearing on the overpayment decision (# 201762), and on March 30, 2015, issued hearing Decision 15-UI-36648, concluding that claimant did not willfully make a misrepresentation to obtain benefits, was not overpaid benefits, and was not liable for a monetary penalty or disqualified from future benefits.

On April 6, 2015, the employer filed an application for review of Hearing Decision 15-UI-35962, the discharge decision. On April 16, 2015, the employer filed an application for review of Hearing Decision 15-UI-36648, the overpayment decision. Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-25962 and 15-UI- 36648. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-0389 and 2015-EAB-0526).

With its application for review of the discharge decision, the employer included a letter in which its representative asked for a new hearing, explaining that “[w]e never received a letter in the mail stating what day the hearing was to be held; therefore we were unable to participate in this hearing.” The employer’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. The employer provided no details about the failure to receive the hearing

notice, such as problems it may have experienced with its mail. We also note that the notices for both hearings were sent to the employer's address of record – 55325 Timber Rd., Vernonia OR 97064. The employer did not explain why it received for an apparent discrepancy – that it received one hearing notice at this address but did not receive another one. Without supporting details, we have no reason to conclude that the employer's lack of notice was a circumstance beyond its reasonable control. The employer's request to present to information is therefore denied.

With its application for review of the overpayment decision, the employer included a letter in which its representative again asked that the discharge hearing be reopened and explained that the employer has “irrefutable evidence showing that the claimant was violent in manner and let go for this incident.” The information provided in this letter is new evidence. As explained above, the employer failed to demonstrate that circumstances beyond its reasonable control prevented it from participating in the March 27, 2015 hearing and presenting the information it now wants EAB to consider.

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 Decision 15-UI-35962 and 15-UI- 36648 are affirmed.

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

DATE of Service: May 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. 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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