

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0411

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 5, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 143927). Claimant filed a timely request for hearing. On April 2, 2015, ALJ Frank conducted a hearing in which the employer did not participate, and on April 8, 2015, issued Hearing Decision 15-UI-36521, concluding that the employer discharged claimant, but not for misconduct. On April 13, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer's district manager requested that the hearing be reopened. In support of his request, the district manager stated that he was unable to attend the hearing because the employer's CEO "was out for medical reasons. I was assuming his responsibilities as well as my own. On 4/2 I was not available for the hearing because of the unforeseen responsibilities assigned to me at that time." 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 demonstrates it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. The employer's district manager failed to specifically explain what "unforeseen responsibilities" prevented him from either requesting a postponement of the hearing or appearing at the hearing. In addition, the district manager did not explain why someone else could not have represented the employer at the hearing. Without such information, we have no reason to conclude that the employer's failure to participate in the April 2 hearing resulted from circumstances beyond its reasonable control.

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-36521 is affirmed.
Tony Corcoran and J. S. Cromwell;
Susan Rossiter, not participating.

DATE of Service: May 7, 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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