

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0458

Affirmed
No Disqualification

PROCEDURAL HISTORY: On February 23, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 135210). Claimant filed a timely request for hearing. On March 24, 2015, ALJ Holmes-Swanson conducted a hearing, and on March 30, 2015 issued Hearing Decision 15-UI-35965, concluding the employer discharged claimant, but not for misconduct. On April 16, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer's argument contained information – texts allegedly sent by claimant after Hearing Decision 15-UI-35965 was issued. Under OAR 471-041-0090 (October 29, 2006), EAB may consider new evidence only if it is relevant and the party offering it shows that circumstances beyond its reasonable control prevented it from offering the information at the hearing. Any texts claimant may have sent *after* the employer discharged him are not relevant to the reasons for his discharge. Accordingly, we considered only information received into evidence at the hearing when reaching this decision. We considered other material in the employer's written argument only to the extent it was relevant and based on the hearing record.

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-35965 is affirmed.

Susan Rossiter and Tony Corcoran;
J. S. Cromwell, 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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