

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0485

Adopted
No Disqualification

PROCEDURAL HISTORY: On March 18, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 72623). Claimant filed a timely request for hearing. On April 9, 2015, ALJ Triana conducted a hearing. The employer's representative initially participated in the hearing but left the hearing before any testimony was taken because no employer witnesses appeared for the hearing. On April 13, 2015, ALJ Triana issued Hearing Decision 15-UI-36734, concluding the employer discharged claimant, but not for misconduct. On April 27, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

In its written argument, the employer representative requested reopening of the hearing because its witness did not appear at the hearing. The employer's request is construed as a request to present 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 circumstance beyond its control from presenting the information at the hearing. In support of its request for a reopening, the employer's representative asserted that the employer's witness did not appear at the hearing because she mistakenly assumed that the hearing would be postponed and rescheduled because claimant's representative had requested a postponement. Here, the employer had it within its reasonable control to contact the Office of Administrative Hearings to determine if the postponement request had been granted and to confirm the date and time of the hearing. Therefore, 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-36734 is affirmed.

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

DATE of Service: May 8, 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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