

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0543

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 26, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct (decision # 135343). The employer filed a timely request for a hearing. On April 16, 2015, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for April 30, 2015. On April 30, 2015, ALJ Frank conducted a hearing in which the claimant did not participate, and on May 8, 2015, issued Hearing Decision 15-UI-38172, concluding that claimant voluntarily left work without good cause. On May 12, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review, claimant included a letter in which she provided evidence regarding her work separation and explained why she failed to appear at the April 30 hearing. Claimant's request is considered a request to have EAB consider new evidence under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party offering the information shows that circumstances beyond its reasonable control prevented the party from presenting the information at the hearing.

In her May 12, 2015 letter, claimant stated that she did not participate in the hearing because she did not have adequate or timely notice of the hearing. In support of her argument, claimant included a copy of an April 27, 2015 letter and documents she received from the employer's representative. In this letter, the employer's representative noted that it is submitting its exhibits to the ALJ for an April 30 hearing scheduled for 9:30 a.m. before ALJ Frank, and indicated that copies of the exhibits and letter have been sent to claimant. (Exhibit 1). Claimant stated that she received the employer's letter "just a day before the scheduled hearing. Which gave me no time to research and obtain the information on my own as to where the hearing was or how I needed to call in if that is how the hearing took place." Claimant's May 12, 2015 letter, p. 2.

It appears that claimant never received the Notice of Hearing that OAH mailed to her on April 16, 2015, and only learned about the hearing when she received a letter and copies of the employer's exhibits on April 29, 2015. Based on the address in the employer's letter, however, claimant knew that the hearing was being conducted by an ALJ from OAH. It was well within claimant's reasonable control to contact OAH,¹ explain that she had not received adequate notice of the hearing, and request a postponement. It was also within claimant's reasonable control to contact the Department to ask for information about her hearing or how to obtain information about her hearing. Because claimant failed to take these actions, we cannot conclude that circumstances beyond her reasonable control prevented her from participating in the hearing and presenting the information she now wants EAB to consider. Claimant's request to present new information is therefore 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-38172 is affirmed.

Susan Rossiter and J. S. Cromwell;
D. P. Hettle, *pro tempore*, not participating.

DATE of Service: June 5, 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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¹ A Google search for "Oregon Office of Administrative Hearings" will display a "Contact Us" screen for OAH; this screen provides a telephone number to call "For Your Hearing Information." www.oregon.gov/oah/Pages/contact_us.aspx.