

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0544

Adopted
No Disqualification

PROCEDURAL HISTORY: On March 25, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 111049). Claimant filed a timely request for hearing. On April 22, 2015, ALJ M. Davis conducted a hearing in which the employer did not participate and issued Hearing Decision 15-UI-37326, concluding that the employer discharged claimant, but not for misconduct. On May 9, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer submitted a letter in which it asked that the hearing be reopened and that an enclosed letter of resignation from the claimant be reviewed. The employer's request is considered a request to consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new evidence if the party presenting the evidence shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. In support of its request, the employer's representative explained that she was unable to participate in the hearing "due to a medical appointment for one of my residents." (The employer is an adult foster care home). The employer's representative provides no details about the "medical appointment," such as when the appointment was scheduled, how long the appointment lasted, whether the appointment was made in advance of the hearing or resulted from an emergency, why another employer representative could not participate in the hearing, and how the appointment prevented the employer from requesting a postponement of the hearing. Without such details, we have no reason to conclude that the employer's failure to participate in the hearing resulted from circumstances beyond the employer's control. We therefore deny the employer's request to have EAB consider new evidence.

EAB considered 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-37326 is affirmed.

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

DATE of Service: May 26, 2015

NOTE: You may appeal this decision by filing a Petition for 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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