

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0587

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 25, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 95235). The employer filed a timely request for hearing. On May 6, 2015, ALJ Murdock conducted a hearing, and on May 8, 2015 issued Hearing Decision 15-UI-38143, affirming the Department's decision. On May 20, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer included an argument with its application for review, but failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision. Even if we had, the outcome of this decision would remain the same. The employer argued that the ALJ erred because “[s]tatements taken from 1st hand witnesses were not allowed to be admitted in hearing – copies were sent to judge and claimant prior to hearing.” As the ALJ indicated, however, the employer's documents consisted of hearsay statements and were immaterial or unduly repetitious of testimony. Hearing Decision 15-UI-38143 at 1. Under OAR 471-040-0025(5), the ALJ is responsible to ensure that immaterial and unduly repetitious evidence is excluded from the hearing, and, since the employer was not barred from presenting the same evidence orally during the hearing, the employer did not establish that the ALJ's exclusion of the documents themselves was prejudicial to the employer's ability to make its case. The employer did not establish that the ALJ erred or abused her discretion by refusing to admit the written statements under those circumstances.

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-38143 is affirmed.

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

DATE of Service: May 29, 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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