

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0593**

*Affirmed*  
*Withdrawal Allowed*

**PROCEDURAL HISTORY:** On March 20, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that wages and hours could not be added to claimant’s claim based on his request for an adjustment of claim determination. On March 24, 2015, claimant filed a timely request for hearing. On April 16, 2015, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for April 30, 2015. On April 30, 2015, ALJ Shoemake conducted a hearing and issued Hearing Decision 15-UI-37764, allowing claimant’s withdrawal of his hearing request. On May 19, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

In his written argument, claimant asked that we “keep the Hearing open,” explaining that circumstances beyond his control caused claimant to be “untimely in notifying and requesting additional time to seek out a law firm to represent me,” and his postponement request should have been allowed. Claimant’s request for relief is construed as a request to have EAB consider 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 circumstances beyond its reasonable control from presenting the information at the hearing. In support of his request, claimant essentially argued that he failed to provide evidence at the hearing because of the ALJ’s denial of his request, which constituted a circumstance beyond his reasonable control that would allow EAB to consider the new information.

Claimant requested postponement so he would have additional time to obtain legal representation and because an undisclosed (and undiagnosed) medical problem or disability affected his focus and ability to read, further necessitating legal representation. A party’s request for postponement may be granted if the request is promptly made after the party becomes aware of the need for postponement, and the party has good cause for not attending the hearing at the time and date set; “good cause” exists when the

circumstances causing the request are beyond the reasonable control of the requesting party, and failure to grant the postponement would result in undue hardship to the requesting party. OAR 471-040-0021. The standard of review for postponement denials is whether the ALJ's denial of the request constituted an abuse of discretion.

Claimant's statements to the ALJ at the time set for hearing indicate that he was prepared to represent himself at the hearing and discuss issues related to the Department's refusal to add wages and hours to his claim for benefits until April 28, 2015, when he discovered by receiving a packet of documents from the employer's legal representative that the employer would attend the hearing, and that the employer had a legal representative. Claimant argued that he did not know until receiving the documents on April 28<sup>th</sup> that the employer was going to participate in the hearing at all. However, claimant did not provide any reason why the employer's decision to attend the hearing or have legal representation rendered him incapable of explaining to the ALJ why he disagreed with the Department's decision, when he had been prepared to do just that prior to finding out that information. And, in any event, the materials claimant provided to claimant clearly indicated that the employer was, or might be, participating in the hearing with him. The notice of hearing scheduling the April 30<sup>th</sup> hearing was mailed to claimant and to Senvoy, LLC, which would have put claimant on notice that someone from Senvoy was scheduled to participate in the same hearing at the same time. The notice also stated:

**NOTICE OF RIGHTS**  
**IMPORTANT INFORMATION ABOUT YOUR HEARING.**  
**IF YOU HAVE QUESTIONS, CALL 1-888-577-2422 IMMEDIATELY**

**HEARING PROCEDURE:** An Administrative Law Judge (ALJ) employed by the Office of Administrative Hearings (OAH) will conduct the hearing and make an independent decision. The parties listed on the Notice of Hearing will be allowed to present evidence at the hearing.

\* \* \*

You may represent yourself, have someone represent you, or hire an attorney at your own expense. Legal aid organizations may be able to assist a party with limited financial resources. The Public Benefits Hotline can be reached at 1-800-520-5292. The Employment Department will not be represented by an attorney. Parties usually are not represented by attorneys in unemployment insurance cases.

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At the hearing, all of the parties will be tele-conferenced together so they can hear each other, the ALJ and any other witnesses. The ALJ will identify everyone who is present, the issue(s) being addressed at the hearing and who has the burden of proof.

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The ALJ will take testimony from witnesses under oath or affirmation. Each side is allowed to ask questions of any witness who testifies. The parties will be given an opportunity to present their evidence and to respond to evidence presented by the other party(ies).<sup>1</sup>

Finally, among all the other information it included, the notice also stated:

This concerns your hearing. If you do not understand the enclosed important document, please IMMEDIATELY contact the Office of Administrative Hearings at 1-800-311-3394.<sup>2</sup>

Claimant acknowledged that he received the notice of hearing, but did not read it because of his focus and reading problems. However, despite his focus and reading problems, and although claimant might have been overwhelmed by the notice and the documents he received from the employer, claimant also acknowledged that he did not ask anyone for help to understand the notice or hearing proceeding or obtain medical treatment for his problem. He did not contact the Department to request assistance understanding the notice of hearing. He did not contact OAH at any of the numbers provided to request assistance. He did not seek legal representation at any point prior to the scheduled hearing.

Ultimately, the administrative rule cited above that governs postponements requires that individuals requesting them must make the request “promptly” after becoming “aware of the need for postponement.” OAR 471-040-0021. Claimant arguably became aware of the need for a postponement when he received the notice of hearing mailed to him two weeks prior to the hearing, but did not make a request at that time or promptly thereafter. Assuming that claimant did not become aware of his need for postponement until April 28<sup>th</sup>, when he learned that the employer would participate in the hearing with legal representation, claimant also did not request a postponement at that time or reasonably thereafter. By waiting until the ALJ convened the hearing to request a postponement, even though he had been aware of his need for postponement from two days to two weeks prior to the hearing, claimant failed to make his request “promptly.” We therefore conclude that the ALJ did not abuse her discretion in refusing to allow claimant’s request.<sup>3</sup>

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-37764 is affirmed.

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

**DATE of Service: May 29, 2015**

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<sup>1</sup> Notice of hearing, page 6.

<sup>2</sup> Notice of hearing, page 5 (emphasis in original).

<sup>3</sup> We also note that claimant did not show “good cause” to allow the request. Claimant asserted that having representation would resolve his concerns about appearing at the hearing while affected by his medical problem or disability that caused him to have difficulty with focus and reading. However, at no point prior to the hearing did claimant actually seek legal representation. We cannot conclude that obtaining legal representation prior to the hearing was outside claimant’s reasonable control since he made no attempt to do so.

**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](http://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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