

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0731

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 7, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 95659). Claimant filed a timely request for hearing. On June 4, 2015, ALJ Wipperman conducted a hearing at which the employer failed to appear, and issued Hearing Decision 15-UI-39548, concluding that the employer discharged claimant, but not for misconduct. On June 11, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer included a letter in which the employer's owner apologized for missing the hearing and provided information regarding claimant's work separation. We consider the employer's letter 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 that circumstances beyond its reasonable control prevented it from offering the information into evidence at the hearing. The employer's owner explained that he missed the hearing because "I was on the phone with a customer at the 1:30 time and by the time I called in (1:38), the hearing was over." The owner does not explain how long the call with the customer lasted, whether the call involved an emergency or other urgent situation, whether another employee could have been asked to take the call, or whether the owner could have asked another employee to call into the hearing and explain the situation. Without this information, we have no reason to conclude that factors or circumstances beyond the employer's reasonable control prevented it from appearing at the hearing. The employer's request to present new evidence therefore 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-39548 is affirmed.

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

DATE of Service: June 22, 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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