

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0822

Affirmed
No Disqualification

PROCEDURAL HISTORY: On June 10, 2015 the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer suspended claimant for misconduct (decision #140611). Claimant filed a timely request for hearing. On July 6, 2015, ALJ S. Lee conducted a hearing which was scheduled to begin at 8:15 a.m. and in which the employer did not participate, and issued Hearing Decision 15-UI-41091, concluding that the employer discharged claimant, but not for misconduct. On July 8, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer's representative asks for another hearing because he called in late. The representative explained that "[t]he reason I was late was due to a flood of customers at the time of the hearing. I wished now I would have asked for the time to be later than 8:15 am as we open at 8:00 am. I came in early to call in but there were customers waiting for me from the Fourth of July weekend and I was distracted for 30 minutes." The employer's request is construed as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing if the party offering the information shows that circumstances beyond its reasonable control prevented it from presenting the information at the hearing. The conflict between the time the hearing was scheduled to begin and the time the employer's business was scheduled to open was reasonably foreseeable. The employer's representative failed to show that he made any attempt to resolve the conflict, such as requesting a postponement in advance of the hearing date, designating another individual to represent the employer at the hearing, or finding an employee to serve customers while the representative participated in the hearing. For this reason, the employer's representative failed to show that circumstances beyond the employer's reasonable control prevented it from participating in the hearing. The employer's request to have EAB consider new information 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-41091 is affirmed.

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

DATE of Service: July 15, 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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