

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0868

Affirmed
Disqualification

PROCEDURAL HISTORY: On June 1, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision #134607). Claimant filed a timely request for hearing. On June 24, 2015, ALJ S. Lee conducted a hearing, and on July 1, 2015, issued Hearing Decision 15-UI-40996, affirming decision #134607. On July 16, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his written argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider this argument in reaching this decision. With his written argument, claimant submitted new information that was not part of the hearing record. This information consisted of written statements from two former employees of the employer regarding the treatment of employees by the employer's owner. Under OAR 471-041-0090 (October 29, 2006), EAB may consider new evidence if the party offering the evidence shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. In support of his request to have EAB consider the employees' statements, claimant asserted that the ALJ failed to call any of the witnesses whose testimony he wanted to present. Written Argument at 1.

At the conclusion of the hearing, the ALJ questioned claimant about one of the witnesses he wanted to call. When the ALJ asked would be the subject of the witness's testimony, claimant said the witness would testify "how she [the employer's owner] talks to people sometimes." Audio Record at 42:09 to 42:33. Based on claimant's assertion, the ALJ did not call the witness. The ALJ's decision was correct; testimony about how the owner treated other employers was not relevant or material to the issue of how the employer treated claimant. Claimant has therefore failed to demonstrate that circumstances beyond his control, *i.e.*, an incorrect decision of the ALJ, prevented him from presenting the evidence he now

wants EAB to consider at the hearing. Claimant'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-40996 is affirmed.

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

DATE of Service: August 24, 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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