

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0881

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 29, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant had not committed an act that disqualified him from receipt of unemployment benefits (#115309). The employer filed a timely request for hearing. On July, 2, 2015, ALJ Frank conducted a hearing, and on July 7, 2015, issued Hearing Decision 15-UI-41080, affirming the administrative decision. On July 22, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer included a document showing the results of a February 19, 2015 drug test administered to claimant by a laboratory that showed that a urine sample submitted by claimant had tested positive for marijuana. The employer explained that the test results were not available at the time of the hearing because “we had to wait for the Safety Advisor to get back from training to obtain the results from her.” Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information if the party offering the information demonstrates it is relevant and material to EAB’s determination, and also demonstrates that circumstances beyond the party’s reasonable control prevented the party from offering the information at the hearing. The employer did not explain what dates the Safety Advisor attending training, why they couldn’t contact her during the training and obtain the test results, and why, if the test results were unavailable at the time of the hearing, the employer did not ask that the ALJ postpone the hearing. We also note that the laboratory results the employer asks that EAB consider are not relevant or material to the issues before us, which are: whether the laboratory that administered the test was a federal or state licensed laboratory and whether the urine sample submitted by claimant was subjected to an initial and confirmatory test. The employer’s request to have EAB consider new information is therefore 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-41080 is affirmed.

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

DATE of Service: July 27, 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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