

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0887

Affirmed
No Disqualification

PROCEDURAL HISTORY: On June 17, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision #145942). Claimant filed a timely request for hearing. On July 2, 2015, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for July 17, 2015. On July 17, 2015, ALJ S. Lee conducted a hearing at which the employer failed to appear, and on July 17, 2015, issued Hearing Decision 15-UI-41668, concluding that the employer discharged claimant, but not for misconduct. On July 23, 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 its Human Resources Coordinator asks that the hearing be reopened. The employer's request is construed as a request to have EAB consider new 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 the employer's request, the Human Resources Coordinator explained that the employer's administrative office was closed and staff furloughed from June 22 through July 20, 2015. She also explained that she was out of the office during this period, and that mail delivery was "suspended" and mail held at the post office until July 20. The Human Resources Coordinator apparently obtained the employer's mail on July 20, and received the hearing notice and hearing decision on that date. Based on these facts, we infer that the employer did not timely receive the hearing notice because it arranged to have mail delivery stopped during the absence of the Human Resources Coordinator, closure of its administrative office or furlough of its staff. It was well within the employer's reasonable control to make arrangements for the receipt and processing of important mail during a period when staff was absent and the office closed. The employer's request to have EAB consider new evidence 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-41668 is affirmed.

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

DATE of Service: July 29, 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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