

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0938

Affirmed
No Disqualification

PROCEDURAL HISTORY: On June 9, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 114830). Claimant filed a timely request for hearing. On July 2, 2015, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for July 15, 2015. On July 15, 2015, ALJ R. Davis conducted a hearing at which the employer failed to appear, and on July 23, 2015 issued Hearing Decision 15-UI-41905, concluding the employer discharged claimant, not for misconduct. On August 6, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

In written argument, the employer requested that the July 15, 2015 hearing be reopened and submitted new information regarding claimant's work separation for EAB's consideration. We construe the employer's request as a request for EAB to consider its new information under OAR 471-041-0090(2) (October 29, 2006), which allows EAB to consider new information when the party offering the information establishes that factors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing. In support of its request, the employer first asserted that based on information and belief, OAH mailed notice of the hearing to the employer on July 7. The employer asserted that it failed to appear at the July 15 hearing because it received notice of the hearing during the week of July 13, and the notice was placed on the desk of the employer's payroll manager, who handled such matters, by an administrative assistant who was unaware that the payroll manager was on vacation from July 13 through 20. The employer concluded by asserting that it therefore was unaware of the July 15 hearing until July 20, and that it has since implemented certain measures to ensure that such situations did not occur in the future.

First, we note that OAH mailed the employer notice of the hearing on July 2, not July 7, and we find it unlikely that it took 9 or more days to be received by the employer. Regardless, the processing of the

employer's mail while the payroll manager was on vacation was within the employer's reasonable control, as demonstrated by the fact that the employer has since implemented measures to ensure that this situation does not occur in the future. The employer's request for EAB to consider new information under OAR 471-041-0090(2) (October 29, 2006) therefore is denied. Accordingly, EAB considered the employer's argument regarding claimant's work separation only to the extent it was based on information received into evidence at the hearing.

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-41905 is affirmed.

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

DATE of Service: August 11, 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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