

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0949

Adopted
No Disqualification

PROCEDURAL HISTORY: On June 25, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 134832). Claimant filed a timely request for hearing. On July 20, 2015, ALJ Shoemake conducted a hearing, and on July 27, 2015 issued Hearing Decision 15-UI-42036, concluding claimant's discharge was not for misconduct. On August 4, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond the employer's reasonable control prevented it from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

Even if we had considered the employer's argument, the outcome of this decision would remain the same. First, it is not apparent from the employer's new information that claimant's email included confidential information belonging to the employer, or that claimant knew or should have known that disclosing information about his own pay, or his dispute with the person with whom he was exchanging emails, would be considered a violation of the employer's expectation that he refrain from disclosing the employer's confidential information. Second, while the employer argued that it should be allowed another hearing because the employer had insufficient time to submit documents for the hearing, "the qualified person to handle this" was not available for the hearing, and a request "for an extension" was denied, the employer's representative did not mention any of those things to the ALJ during the hearing. He did not ask permission to submit the documents to the ALJ, or ask the ALJ to continue the hearing to another time so "the qualified person" could testify. Absent evidence that the employer asked the ALJ for a continuance or made some attempt to offer the information the employer now seeks to admit into the hearing record, we cannot conclude that the ALJ erred in failing to allow a continuance or hold the

record open to admit the employer's documents. Therefore, our decision would still be based on the record developed at the hearing, and the outcome would remain the same.

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-42036 is affirmed.

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

DATE of Service: August 18, 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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