

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1336

Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 4, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 152715). Claimant filed a timely request for hearing. On October 27, 2015, ALJ R. Frank conducted a hearing, at which the employer failed to appear, and on October 30, 2015 issued Hearing Decision 15-UI-46852, concluding claimant's discharge was not for misconduct. On November 10, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

In its written argument, the employer asked for a new hearing on the grounds that its human resource manager was unable to appear and present evidence on October 27th. The employer's request for relief is construed as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing 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 its request, the employer asserted that its human resources manager was prevented from attending the hearing because of an unexpected conflict with a phone call. The employer did not assert or show that the human resource manager was the only individual who could have participated in the hearing on the employer's behalf. The employer did not assert or show what, if any, attempt the employer made to participate in the hearing despite the human resource manager's conflict, or show what, if any, attempt it made to the hearing postponed to allow the human resource manager to attend. In the absence of evidence establishing that it was beyond the employer's reasonable control to present information at the hearing, the employer'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-46852 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: November 16, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.