

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1351

Affirmed
No Disqualification

PROCEDURAL HISTORY: On October 1, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 91344). Claimant filed a timely request for hearing. On November 12, 2015, ALJ Holmes-Swanson conducted a hearing, at which the employer did not appear, and on November 13, 2015, issued Hearing Decision 15-UI-47650, concluding that the employer discharged claimant, but not for misconduct. On November 16, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

By letter dated December 2, 2015, the employer submitted information about the claimant's work separation and explained that it did not receive notice of the hearing and was unaware that a hearing had taken place. The employer's request is construed as a request to have EAB consider new information under OAR 471-041-0090, which allows EAB to consider new information if the party presenting the information shows that circumstances beyond the party's reasonable control prevented it from presenting the information at the hearing. The employer provided no details about its failure to receive notice of the November 13 hearing, *e.g.*, problems it may have been experiencing with delivery or receipt of mail, or problems with office procedures or staff that may have prevented proper processing of the mail, etc. There is a rebuttable presumption in Oregon law that items sent through the U.S. Postal Service are presumed to be received, subject to evidence that the item was not received. Without supporting details, we have no reason to conclude that the employer's lack of notice of the hearing was a circumstance beyond its reasonable control. 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-47650 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: December 21, 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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