

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1391

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On September 22, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 133528). Claimant filed a timely request for hearing. On October 6, 2015 the Office of Administrative Hearings issued notice of a hearing scheduled for October 20, 2015. On October 20, 2015, ALJ M. Davis issued Hearing Decision 15-UI-46221, dismissing claimant's hearing request for failure to appear at the hearing. Claimant filed a timely request to reopen. On November 16, 2015, ALJ Kangas issued Hearing Decision 15-UI-47741, denying claimant's request to reopen. On November 28, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a statement to EAB in which he asked for a new hearing, and stated that he missed the hearing due to child care. The information claimant provided to EAB regarding his failure to attend the hearing is new information which is not part of the record in this case. Under OAR 471-041-0090 (October 29, 2006), EAB may consider new evidence if the party demonstrates that circumstances beyond its reasonable control prevented it from presenting the information to the ALJ. Claimant did not explain why he failed to state the reason he did not participate in the October 20, 2015 hearing in his motion to reopen. EAB will not therefore consider claimant's new information. Even if we had the outcome would remain the same, because claimant did not explain what it was about child care that prevented him from participating in the hearing, or, in the alternative, why child care prevented him from asking for a postponement.

EAB reviewed the entire record in this case. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 15-UI-47741 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: December 1, 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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