

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0140

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 3, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 144611). Claimant filed a timely request for hearing. On January 4, 2016, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for Tuesday, January 19, 2016. On Friday, January 15, 2016, the employer filed a written request for OAH to postpone the hearing. OAH denied the request. On January 19, 2016, ALJ Murdock conducted a hearing in which the employer participated, and on January 20, 2016 issued Hearing Decision 16-UI-51378, concluding the employer discharged claimant, but not for misconduct. On February 8, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

In written argument, the employer asserted that the ALJ erred in denying its request for a postponement due to a conflict with a potential employer witness' doctor appointment. OAR 471-040-0021(2) (August 1, 2004) states that a postponement may be granted by OAH staff at the request of a party if the request is promptly made after the party becomes aware of the need for postponement, and the party has good cause, as stated in the request, for not attending the hearing at the time and date set. OAR 471-040-0021(3) states that good cause exists when the circumstances causing the request are beyond the reasonable control of the requesting party, and failure to grant the postponement would result in undue hardship to the requesting party.

The employer did not request a postponement until Friday, January 15, 2016, 11 days after OAH mailed notice of the hearing to the employer's address of a record, and given that Monday, January 18, 2016 was a state holiday, only 1 business day before the hearing scheduled for Tuesday, January 19, 2016. The employer did not state in its request for a postponement or written argument when it became aware that its potential witness had a conflicting doctor appointment.¹ Although the employer stated in its written argument that the potential witness was "unable to cancel or reschedule" the appointment, it did

¹ Employer's Request for Postponement at 1; Employer's Written Argument at 1.

not do so in its request for a postponement.² The record therefore fails to show the request was promptly made after the employer became aware of the need for postponement, or that the employer had good cause, *as stated in the request for postponement*, for not attending the hearing at the time and date set, as required under OAR 471-040-0021(2). OAH therefore did not err in denying the employer's request for a postponement.

EAB also considered that portion of the employer's written argument asserting facts allegedly showing claimant's discharge was for misconduct. However, EAB considered the entire hearing record, which does not support the employer's factual assertions. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 16-UI-51378 is affirmed.

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

DATE of Service: February 26, 2016

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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² *Id.*