

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0318

Affirmed
No Disqualification

PROCEDURAL HISTORY: On November 4, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 95534). The employer filed a timely request for hearing. On January 15, 2016, ALJ Murphey conducted a hearing, and on January 19, 2016 issued Hearing Decision 16-UI-51243, concluding claimant's discharge was for misconduct. On February 6, 2016, claimant filed an application for review with the Employment Appeals Board (EAB). On March 26, 2016, EAB issued Appeals Board Decision 0132, reversing Hearing Decision 16-UI-51243, and remanding it to an ALJ for further development of the record.

On March 14, 2016, ALJ Seideman conducted a hearing in which the employer did not participate, and on March 18, 2016, issued Hearing Decision 16-UI-55312, concluding that the employer discharged claimant, but not for misconduct. On March 22, 2016, the employer filed an application for review of Hearing Decision 16-UI-55312 with EAB.

With its application for review, the employer included a letter in which the employer's representative stated that "I was sick, and unaware there was another hearing." On March 23, 2016, the employer submitted a written argument that included some new information that had not been presented at any previous hearing. The employer's statement and written argument are construed as requests to have EAB consider new evidence under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new evidence if the party presenting the evidence demonstrates that circumstances beyond its reasonable control prevented it from offering the evidence at the hearing. The employer's representative provided no explanation why or how her illness prevented her from realizing that another hearing had been scheduled. Without these details, we have no basis for concluding that circumstances beyond the employer's reasonable control prevented its representative from appearing at the March 14, 2016 hearing and presenting the evidence it now wants EAB to consider. The employer's request to present new information is therefore denied, and EAB considered only those portions of the employer's argument that are relevant and based on the hearing record.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), Hearing Decision 16-UI-51243 is **adopted**.

DECISION: Hearing Decision 16-UI-55312 is affirmed.

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

DATE of Service: March 31, 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.

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.