

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0461**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 4, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 122258). Claimant filed a timely request for hearing. On March 29, 2016, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for April 13, 2016. The notice of hearing gave the parties two telephone numbers at which they could contact OAH, if they had questions prior to the hearing. On April 13, 2016, ALJ Menegat conducted a hearing at which the employer failed to appear, and issued Hearing Decision 16-UI-57232, concluding the employer discharged claimant, but not for misconduct. On April 21, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer submitted a letter in which it asked to that the hearing be reopened. The employer's request is construed as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party presenting the information demonstrates that circumstances beyond the party's reasonable control prevented the party from offering the information at the hearing. In support of its request, the employer asserted that "[a] request was submitted to reschedule the case on April 6<sup>th</sup>, before the deadline. There was no follow-up and the case moved forward without our knowledge." The employer also submitted a copy of an April 6, 2016 fax transmission in which it asked that OAH reschedule the April 13 hearing. OAH's apparent error in failing to respond to the employer's request for a postponement was a circumstance beyond the employer's reasonable control. However, it was well within the employer's reasonable control to contact OAH at one of the numbers provided on the notice of hearing to determine whether its request to reschedule the hearing had been granted, rather than assume that it had been. The employer therefore failed to establish that OAH's failure to respond to its request for a postponement

prevented the employer from appearing at the hearing and offering information into evidence at that time. The employer's request for EAB to 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 16-UI-57232 is affirmed.

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

**DATE of Service:** May 19, 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](http://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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