

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0540

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 21, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 144902). Claimant filed a timely request for hearing. On April 1, 2016, ALJ M. Davis conducted a hearing, at which the employer failed to appear, and on April 15, 2016 issued Hearing Decision 16-UI-57344, concluding claimant's discharge was not for misconduct. On May 5, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer requested another hearing be held because the employer's witness was unable to attend the April 1st hearing. 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 offering the information demonstrates that circumstances beyond its immediate control prevented the party from presenting the information at the hearing. The employer provided no details regarding why its witness was unable to attend the hearing, and, if unable to attend on the scheduled date and time, why the employer was unable to request a postponement. Without those details, we have no reason to conclude that the witness's inability to attend was a circumstance beyond the employer's reasonable control that prevented it from presenting information at the hearing. 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 16-UI-57344 is affirmed.

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

DATE of Service: May 17, 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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