

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0553**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 7, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 82044). Claimant filed a timely request for hearing. On April 21, 2016, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for May 5, 2016. On May 5, 2016, ALJ Shoemake conducted a hearing at which the employer failed to appear, and on May 9, 2016 issued Hearing Decision 16-UI-59163, concluding the employer discharged claimant, but not for misconduct. On May 12, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

In written argument, the employer asserted that it failed to appear at the May 5, 2016 hearing because it did not receive the April 21, 2016 notice of hearing, and submitted new information regarding claimant's work separation for EAB's consideration. OAR 471-041-0090 (October 29, 2006) states that EAB may consider such information when the party offering the information establishes that factors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing. Here, the Department mailed the April 21 notice of hearing to the employer's address of record with the Department,<sup>1</sup> the same address to which the Department mailed administrative decision # 82044 and Hearing Decision 16-UI-59163, neither of which the employer asserted it failed to receive, and the same address the employer indicated is correct in its application for review. Under OAR 137-003-0520 (January 31, 2012), documents sent through the US Postal Service are presumed to have been received by the addressee, subject to evidence to the contrary. The employer's bare assertion that it did not receive the hearing notice is insufficient to rebut the presumption of delivery, or otherwise establish that factors or circumstances beyond its reasonable control prevented it from appearing at the hearing and offering information into evidence at that time. EAB therefore did not consider the employer's new information when reaching this decision.

<sup>1</sup> We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

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-59163 is affirmed.

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

**DATE of Service:** May 18, 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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