

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0661**

*Affirmed*  
*Request to Reopen Denied*

**PROCEDURAL HISTORY:** On April 6, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 80434). Claimant filed a timely request for hearing. On May 3, 2016, ALJ Seideman conducted a hearing in which the employer failed to appear, and issued Hearing Decision 16-UI-58772, concluding that the employer discharged claimant, but not for misconduct. The employer filed a timely request to reopen. On May 17, 2016, ALJ Kangas issued Hearing Decision 16-UI-59722, denying the employer's request to reopen. On June 2, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer included a letter in which an employer representative explained that she was prevented from attending the May 3 hearing by "an urgent workers' comp incident." That information was not part of the record in this case. Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information if the party presenting the information demonstrates that it is relevant and material to EAB's determination, and that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. The employer did not assert or show that circumstances beyond its reasonable control prevented it from including its new information in its request to reopen. Nor is the employer's new information material to our determination. The employer's representative provided no information about the "urgent workers' comp incident": when she became aware of the problem requiring her attention, how much time she spent attending to the problem and when she spent it, and why the incident prevented her or any other employer representative from contacting the Office Administrative Hearings to request a postponement of the hearing. Without such details, we have no reason to conclude that circumstances beyond the employer's reasonable control prevented it from appearing at the May 3 hearing. The employer's request for EAB to consider its new information therefore is denied.

EAB reviewed the entire record in this case. On *de novo* review and pursuant to ORS 657.275, the hearing decision under review is **adopted**.

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

**DECISION:** Hearing Decision 16-UI-59722 is affirmed.

**DATE of Service:** June 9, 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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