

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0738**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On May 17, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 93933). Claimant filed a timely request for hearing. On May 31, 2016, the Office of Administrative Hearings issued notice of a hearing scheduled for June 13, 2016 at 2:30 p.m. On June 13, 2016, ALJ Menegat conducted a hearing at which the employer failed to appear, and issued Hearing Decision 16-UI-61670, concluding the employer discharged claimant, but not for misconduct. On June 22, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer's owner included a letter in which he presented information about claimant's work separation. The owner's letter is construed 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 shows it was prevented by circumstances beyond its reasonable control from offering the information at the hearing. In support of his request, the owner explained that on the day of the hearing, the employee who had been designated to take the owner's place "did not come to work as planned." As a result, the owner was required to assist customers at the time the hearing was scheduled to occur and was unable to participate in the hearing. As noted above, the hearing was scheduled to begin at 2:30 p.m. on June 13. It is probable that the owner knew some time prior to 2:30 p.m. that the employee who was supposed to replace him was not going to report to work. The owner failed to explain why he was unable to contact the Office of Administrative Hearings to request a postponement of the hearing, once he realized that his replacement was not coming to work. Without this information, we cannot conclude that circumstances beyond the owner's reasonable control prevented him from doing so. The request to present 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-61670 is affirmed.

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

**DATE of Service: June 24, 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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