

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0753

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 6, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 133802). Claimant filed a timely request for hearing. On June 7, 2016, ALJ Lohuis conducted a hearing at which the employer failed to appear, and on June 8, 2016, issued Hearing Decision 16-UI-61348, concluding that the employer discharged claimant, but not for misconduct. On June 24, 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 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 control prevented it from offering the information at the hearing. In support of the employer's request, the employer's general manager asserted that she did not attend the hearing "because of a communication error." According to the general manager, the assistant manager received the hearing notice while the general manager was off work. The general manager explained that "[w]hen I returned to work, I was told the phone hearing for [claimant] was on July 7th, not June 7th." Because the general entered the incorrect hearing date on her calendar, she did not appear for the June 7 hearing. It is within a party's reasonable control to avoid the type of human error that caused the employer's representative to miss the hearing. The employer's request for EAB to consider new information therefore is denied.

EAB reviewed the entire hearing record in this case. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 16-UI-61348 is affirmed.

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

DATE of Service: June 28, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.