

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0965

Affirmed
No Disqualification

PROCEDURAL HISTORY: On June 11, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 133819). Claimant filed a timely request for hearing. On July 21, 2016, ALJ Wyatt conducted a telephone hearing at which the employer failed to appear, and on July 29, 2016 issued Hearing Decision 16-UI-64720, concluding the employer discharged claimant, but not for misconduct. On August 18, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer requested that the July 21, 2016 telephone hearing be reopened. The employer's request is construed as a request for EAB to consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new relevant and material 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. In support of its request, the employer asserted that its "first hand witness was unavailable for the hearing due to being out of the office." However, the employer did not explain why its witness was out of the office, or show that the witness could not have participated by telephone. Nor did the employer state when it learned that its witness was going to be out of the office, or explain why it apparently did not request a postponement prior to the hearing, or appear at the hearing and request a continuance at that time. The employer therefore failed to establish that it was beyond its reasonable control to offer its new information into evidence at hearing. The employer's request for EAB to consider the information therefore is 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-64720 is affirmed.

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

DATE of Service: August 23, 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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