

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1094**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On July 18 2016, the Oregon Employment Department (the Department) served notice of two administrative decisions, one concluding the employer suspended claimant, not for misconduct, on or about May 10, 2016 (decision # 74619), the other concluding the employer subsequently discharged claimant, not for misconduct, on or about May 16, 2016 (decision # 73541). The employer filed timely requests for hearing on both decisions. On August 25, and September 8 and 15, 2016, ALJ Murdock conducted a consolidated hearing, and on September 16, 2016 issued Hearing Decision 16-UI-67681, concluding claimant's suspension was not for misconduct, and Hearing Decision 16-UI-67677, concluding that claimant's discharge was for misconduct. On September 2, 2016, the employer filed an application for review of Hearing Decision 16-UI-67681 with the Employment Appeals Board (EAB).

The employer submitted written argument with its application for review. However, the employer failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). We therefore did not consider the argument when reaching this decision. Even if we had, the outcome would have remained the same. In its argument, as at hearing,<sup>1</sup> and as found by the ALJ,<sup>2</sup> the employer concedes that claimant was suspended pending an investigation into the alleged conduct for which he was later discharged, and not to discipline claimant for that alleged conduct. We agree with the ALJ that because the suspension was for investigatory purposes and not for disciplinary reasons, the suspension was not for misconduct, as defined under OAR 471-030-0038(3) (August 3, 2011).<sup>3</sup>

<sup>1</sup> Transcript (August 25, 2016) at 6.

<sup>2</sup> Hearing Decision 16-UI-67681 at 1.

<sup>3</sup> See Hearing Decision 16-UI-67681 at 3. We note, however, that Hearing Decision 16-UI-67677, which concluded that claimant's subsequent discharge was for misconduct, becomes final on October 6, 2016. Claimant therefore is disqualified from receiving benefits based on the discharge unless he files an application for review of Hearing Decision 16-UI-67677, and that decision is reversed.

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-67681 is affirmed.

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

**DATE of Service:** October 17, 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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