

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1174

Affirmed
No Disqualification

PROCEDURAL HISTORY: On August 30, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 85440). Claimant filed a timely request for hearing. On October 4, 2016, ALJ M. Davis conducted a hearing, at which the employer failed to appear, and on October 5, 2016 issued Hearing Decision 16-UI-68611, concluding claimant's discharge was not for misconduct. On October 19, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

In written argument, the employer asked for a new hearing on the grounds that its participants made an inadvertent scheduling error that caused them to miss the hearing. The employer's request for relief is construed as a request to have EAB consider additional evidence 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 presenting the information at the hearing. Because human error of the sort that cause the employer to miss the hearing is considered to be within a party's reasonable control to avoid, the employer's request to have EAB consider its additional evidence must be 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-68611 is affirmed.

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

DATE of Service: October 21, 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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