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State of Oregon  
**Employment Appeals Board**  
875 Union St. N.E.  
Salem, OR 97311

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**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0016**

*Employer's Request Denied*  
*Hearing Decision 16-UI-73393 Affirmed*  
*Late Request for Hearing Allowed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On May 16, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 74954). On June 16, 2016, decision # 74954 became final without claimant having filed a request for hearing. On August 26, 2016, claimant filed a late request for hearing. On August 31, 2016, ALJ Kangas issued Hearing Decision 16-UI-66607, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by September 14, 2016. On September 15, 2016, claimant filed a response to the appellant questionnaire and a timely application for review of Hearing Decision 16-UI-66607 with the Employment Appeals Board (EAB). On September 26, 2016, EAB issued EAB Decision 2016-EAB-1083, reversing Hearing Decision 16-UI-66607, and remanding this matter to the Office of Administrative Hearings (OAH) for a hearing on whether to allow claimant's late request for hearing on decision # 74954 and, if necessary, whether claimant is disqualified from receiving benefits based on his work separation from the employer.

On October 7, 2016, OAH served notice of a telephone hearing scheduled for October 21, 2016 at 10:45 a.m. Pacific time. On October 19, 2016, the employer telephoned OAH and requested that the hearing be postponed, and OAH denied the request. On October 21, 2016, ALJ Wyatt conducted a hearing at which the employer failed to appear, and on October 26, 2016 issued Hearing Decision 16-UI-69931, allowing claimant's late request for hearing on decision # 74954, and concluding the employer discharged claimant, not for misconduct. On November 8, 2016, the employer filed an application for review of Hearing Decision 16-UI-69931 with EAB. On November 15, 2016, EAB issued EAB Decision 2016-EAB-1253, reversing Hearing Decision 16-UI-69931 and remanding the matter to OAH for a hearing on whether the employer's postponement request was properly denied, and, if so, for a new hearing on the merits of decision # 74954.

On November 29, 2016, OAH served notice of a telephone hearing scheduled for December 13, 2016 at 10:45 a.m. Pacific time. On December 13, 2016, ALJ Wyatt convened a hearing, at which the employer again failed to appear, and on December 21, 2016 issued Hearing Decision 16-UI-73393, again allowing claimant's late request for hearing on decision # 74954, and concluding the employer discharged claimant, not for misconduct. On December 30, 2016, the employer filed an application for review of Hearing Decision 16-UI-73393 with EAB.

With its application for review, the employer submitted a written argument that included new information. EAB may consider the new information if the employer proves that factors or circumstances beyond the employer's reasonable control prevented it from offering the information into evidence at the hearing. OAR 471-041-0090(2) (October 29, 2006). The employer argued that factors beyond its control prevented it from appearing at the December 13th hearing, because the employer's hearing participants were out of the area on business at the scheduled time of the hearing. The employer also argued that it had "requested that the hearing date be re-scheduled for December 19, 2016" and that its hearing participants' "involvement in daily business development meetings precluded us from being available for the scheduled hearing at 10:45 AM."

In our November 2016 decision, we remanded this matter for additional evidence based on the employer's claim that its previous request for postponement had been denied in error coupled with evidence that the employer actually made a request to OAH for the October 21st hearing to be postponed, and that OAH had denied the request. *See* 2016-EAB-1253 at 2. In so doing, we noted that the information we had about the employer's request, *e.g.* the date the employer received notice of the October 21st hearing, the date the employer requested the hearing be postponed, and the office or employee to whom the employer had made its postponement request, was inadequate evidence upon which to determine whether or not OAH properly denied the employer's request without evidence of the specific reason the employer was unable to appear at that hearing.

Turning now to the December 13th hearing and the employer's latest allegation that its request that the hearing be rescheduled was improperly denied, the record fails to suggest that the employer made the request prior to the December 13th hearing, much less that any such request was adjudicated by OAH or improperly denied. The employer alleged that it "requested that the hearing date be re-scheduled for December 19, 2016," but did not indicate when it received the November 29, 2016 notice of hearing, what date it requested the hearing be rescheduled, or which office the employer contacted to make the alleged postponement request. The employer stated, for the first time on this record, that the employer's hearing participants could not appear for a 10:45 a.m. hearing time at all, but provided no information tending to suggest when or to whom the employer made its scheduling requirements known. As such, the preponderance of the evidence fails to establish that the employer made a timely or prompt request for the December 13th hearing to be postponed to a different date or time, and fails to establish that any such request was improperly dismissed. In reaching this decision, we note that the OAH hearing record includes no suggestion that the employer contacted OAH between November 29th and December 13th to request that the December 13th hearing be postponed or rescheduled. We also note that the ALJ specifically noted in his decision, "The employer also did not request a postponement or otherwise communicate with the OAH prior to the December 13, 2016 hearing." *See* Hearing Decision 16-UI-73393 at 1. For all those reasons, we conclude that the employer failed to show that factors or circumstances beyond its reasonable control prevented it from offering its evidence to OAH during a

scheduled hearing proceeding, and, as such, the employer's request for EAB to consider the information 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-73393 is affirmed.

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

**DATE of Service: January 9, 2017**

**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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