

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0140

Affirmed
No Disqualification

PROCEDURAL HISTORY: On December 5, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 154015). The employer filed a timely request for hearing. On January 19, 2017, ALJ Murdock conducted a hearing, and on January 23, 2017 issued Hearing Decision 17-UI-75252, affirming the Department's decision. On February 2, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and the employer's written argument. In its argument, the employer requested that the case be reopened and a new hearing be held, asserting that its witness was unable to attend the January 19, 2017 hearing "due to an emergency at her location and being short staffed." The employer's request is construed as a request for EAB to consider information not received into the hearing under OAR 471-041-0090(2) (October 29, 2006), which states that new, relevant and material information may be considered 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. However, the employer's assertion that its witness was unable to attend the hearing due to a work-related emergency of unspecified nature, time and duration is insufficient to establish that the emergency was due to factors or circumstances beyond the employer's reasonable control, or that it prevented the witness from testifying at the hearing. Additionally, we note that, at hearing, the employer's representative did not request that the hearing be postponed or continued to a later date, and instead chose to proceed and rely on the employer's documentary evidence, which the ALJ admitted as Exhibits 1 and 2. Audio Record at 8:55-9:20. The employer therefore failed to establish that factors or circumstances beyond its reasonable control prevented it from offering its information into evidence at hearing. The employer's request for EAB to consider new information under therefore is denied.

On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 17-UI-75252 is affirmed.

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

DATE of Service: February 13, 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. 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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