

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0409

Affirmed
Request to Reopen Dismissed

PROCEDURAL HISTORY: On December 1, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 114204). Claimant filed a timely request for hearing. On February 10, 2017, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for February 27, 2017 at 9:30 a.m. On February 27, 2017, claimant failed to appear at the hearing, and ALJ Meerdink issued Hearing Decision 17-UI-77741, dismissing claimant's request for hearing due to her failure to appear. On March 16, 2017, claimant filed an application for review of Hearing Decision 17-UI-77741 with the Employment Appeals Board (EAB) that contained no explanation for claimant's failure to appear at the February 27, 2017 hearing. Pursuant to OAR 471-041-0060(4) (January 8, 2008) and OAR 471-040-0040(6) (February 10, 2012), EAB and OAH treated the application for review as a request to reopen the hearing. On March 22, 2017 ALJ Kangas issued Hearing Decision 17-UI-79403, denying the request. On April 5, 2017, claimant filed a timely application for review of Hearing Decision 17-UI-79403 with the Employment Appeals Board (EAB).

With her application for review of Hearing Decision 17-UI-79403, claimant asserted for the first time that she did not receive the February 10, 2017 notice of the hearing scheduled for February 27, 2017 at 9:30 a.m. We infer that claimant wants EAB to consider that information. However, EAB may consider new information only 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 the hearing record. OAR 471-041-0090(2) (October 29, 2006). Hearing Decision 17-UI-77741, which dismissed claimant's request for hearing, informed her that if she did not appear at the hearing she could request to reopen the hearing, and that, pursuant to OAR 471-040-0040, her request had to show, in writing, that factors or circumstances beyond her reasonable caused her to miss the hearing.¹ The form on which claimant filed her request to reopen the hearing also informed her that if she missed the hearing, she could ask that it be reopened, that her request had to include a written statement explaining why she failed to appear or her request would be dismissed, and that unless her statement showed that

¹ Hearing Decision 17-UI-77741 at 3.

circumstances beyond her reasonable control prevented her from appear at the hearing, her request would be denied.² However, claimant did not offer any information regarding her failure to appear,³ and has not asserted that factors or circumstances beyond her reasonable control prevented her from doing so. EAB therefore did not consider claimant's new information when reaching this decision.

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 17-UI-79403 is affirmed.

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

DATE of Service: April 12, 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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² Exhibit 5 at 2.

³ *Id.* at 1.