

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0566

Affirmed

PROCEDURAL HISTORY: On March 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 72607). Claimant filed a timely request for hearing. On April 25, 2017, ALJ Frank conducted a hearing at which the employer did not appear, and on April 27, 2017 issued Hearing Decision 17-UI-82004, reversing the Department's decision. On May 10, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer asked that the April 25, 2017 hearing be reopened to allow it to present evidence on its behalf since it missed that hearing and a decision was reached without the employer having presented any evidence. The employer's request is construed as a request to have EAB consider new information under OAR 471-041-0090(2) (October 29, 2006), which allows EAB to consider new information if the party offering it shows that it was prevented by circumstances beyond its reasonable control from presenting that information at the hearing. Although the employer broadly asserted that it never received the notice of hearing mailed on April 12, 2017, it appears from the letterhead to the employer's request that the notice was indeed mailed to the employer's correct address of record. The employer offered no circumstantial evidence supporting its implied assertion that the notice of hearing was not delivered to it, as opposed to its having been lost, misplaced or not correctly processed after it was delivered. Documents sent through the US Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary. OAR 137-003-0520(11) (January 31, 2012). The employer's bare assertion of non-receipt is insufficient to overcome the presumption that the employer received the notice of hearing. Because the employer did not show that its failure to appear and present evidence at the hearing was the result of factors or circumstances beyond its reasonable control, its request to have EAB consider new information under OAR 471-041-0090(2) is denied.

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the ALJ's findings and analysis in Hearing Decision 17-UI-82004 are **adopted**.

DECISION: Hearing Decision 17-UI-82004 is affirmed.

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

DATE of Service: June 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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