

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0764

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 16, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 85530). Claimant filed a timely request for hearing. On June 5, 2017, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for June 20, 2017. On June 20, 2017, ALJ R. Frank conducted a hearing at which the employer failed to appear and issued Hearing Decision 17-UI-86156, concluding the employer discharged claimant, but not for misconduct. On June 23, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer submitted written argument in which it asked EAB to consider new information, asserting that the employer “should have participated in” the June 20, 2017 hearing, but was “falsely under the impression that the matter had been settled and this was not directly related to [claimant’s] eligibility.” Although the employer failed to certify that it provided a copy of its new information to claimant as required under OAR 471-041-0080(2)(a) (October 29, 2006), it resubmitted the information on July 13, 2017 along with a certification that it provided a copy to claimant.

However, EAB may consider new information that is not part of the record only if the party offering the information demonstrates that factors or circumstances beyond the party’s reasonable control prevented it from offering the information at the hearing. OAR 471-041-0090(2) (October 29, 2006). Here, we infer from the employer’s statement regarding its failure to appear at the hearing that it received the June 5, 2017 notice of the June 20, 2017 hearing. The notice of hearing stated the hearing was to be about the May 16, 2017 administrative decision, and that the issues to be considered included whether claimant shall be disqualified from the receipt of benefits because of a separation, discharge, suspension or voluntary leaving of work. The notice also instructed the parties to call OAH if they had questions prior to the hearing, and provided a toll free number to call. The employer failed to show that factors or circumstances beyond its reasonable control prevented it from understanding the notice of hearing or calling OAH if it had any questions, or that any other factors or circumstances beyond its reasonable control caused it to falsely believe that claimant’s disqualification from receiving benefits had been

settled and that the hearing was not directly related to that issue. Absent such showings, the employer failed to establish that factors or circumstances beyond its reasonable control prevented it from participating in the June 20, 2017 hearing and offering its information into evidence at that time. The employer's request for EAB to consider its new information therefore 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 17-UI-86156 is affirmed.

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

DATE of Service: July 18, 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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