

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0919**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On March 2, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 155512). Claimant filed a timely request for hearing. On July 21, 2017, ALJ Lohr conducted a hearing at which the employer failed to appear, and on July 24, 2017, issued Hearing Decision 17-UI-88714, concluding the employer discharged claimant, but not for misconduct. On July 31, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer requested a new hearing to present evidence regarding claimant's discharge. The employer's request is considered a request to present new evidence under OAR 471-041-0090(2) (October 29, 2006), which allows EAB to consider new information if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. In support of its request, the employer's representative explained that "[t]he company was unaware of the fact that a hearing was being held on this matter & therefore was unable to attend or present our evidence in relation to the case." OAR 471-040-0015(1) (August 1, 2004) provides, in relevant part, that notice of a hearing will be mailed to the parties or their agents "at their last known address as shown by the record of the [Department] Director." The record in this case shows that notice of the July 21 hearing was sent to the employer at its address of record with the Department. Documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary. OAR 137-003-0520(10) (January 31, 2012). The employer provided no explanation as to why it was unaware of the hearing, *e.g.*, difficulties it may have experienced with the mail, or problems with the processing of mail within the company. Without supporting details, we have no basis on which to conclude that the employer's lack of awareness of the hearing resulted from any circumstances beyond the employer's reasonable control. The employer's request to present new information is therefore 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-88714 is affirmed.

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

**DATE of Service:** August 16, 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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