

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1048

Affirmed
No Disqualification

PROCEDURAL HISTORY: On April 11, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 72612). Claimant filed a timely request for hearing. On July 25, 2017, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for August 7, 2017. On August 7, 2017, ALJ Micheletti conducted a hearing at which the employer failed to appear, and on August 15, 2017 issued Hearing Decision 17-UI-90380, concluding that claimant had good cause to quit working for the employer. On September 5, 2017, the employer filed a timely application for review with the Employment Appeals Board (EAB).

With its application for review, the employer submitted a written request for a new hearing to be scheduled on decision # 72612, asserting that it failed to appear at the August 7, 2017 hearing because neither the employer nor its representative received a copy of the July 25, 2017 notice of hearing. The employer's request is construed as a request for EAB to consider new information under OAR 471-041-0090(2) (October 29, 2006). Under that rule, the employer is required to establish that factors or circumstances beyond its reasonable control prevented it from appearing at the hearing and offering information regarding claimant's work separation into evidence at that time.

With respect to the employer's assertion that it did not receive the July 25, 2017 notice of hearing, we note that the notice was mailed to the employer's address in Boca Raton, Florida, which was an address of record with the Department, and the same address to which the Department mailed decision # 72612 and OAH mailed Hearing Decision 17-UI-90380, both of which the employer apparently received. We also note that 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. *See* OAR 137-003-0520(10) (January 31, 2012); ORS 40.135(1)(q). Absent more information, such as how the employer processed mail received at the Boca Raton address and what steps, if any, it took after receiving Hearing Decision 17-UI-90380 to confirm whether it had received the notice of hearing, the employer's bare assertion that it did not receive the notice fails to overcome the presumption that it did. The employer therefore failed to establish that factors or circumstances beyond its reasonable control prevented it from appearing at the

hearing and offering information regarding claimant's work separation into evidence at that time. The employer's request for EAB to consider new information under OAR 471-041-0090(2) 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-90380 is affirmed.

J. S. Cromwell and D. P. Hettle.

DATE of Service: September 27, 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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