

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1064

Affirmed
No Disqualification

PROCEDURAL HISTORY: On July 28, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer suspended claimant for misconduct (decision # 160323). Claimant filed a timely request for hearing. On August 14, 2017, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for August 28, 2017. On August 28, 2017, ALJ Murdock conducted a hearing at which the employer failed to appear, and on August 30, 2017 issued Hearing Decision 17-UI-91543, concluding the employer suspended claimant, but not for misconduct. On September 5, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. With its application for review, the employer submitted written argument in which it offered for EAB's consideration information not received into evidence at the hearing regarding claimant's suspension. OAR 471-041-0090 (October 29, 2006) states, in relevant part, that information not received into evidence at the hearing will not be considered on review, except, subject to notice and an opportunity to be heard, new information may be considered when the party offering the information establishes that the new information is relevant and material to EAB's determination, and that factors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing.

In its written argument, the employer stated that it did not appear at the August 28, 2017 hearing because its representative "assumed" he had provided all information "required for a fair decision" to the Department prior to the hearing, and that it was only after receiving Hearing Decision 17-UI-91543 that he reviewed "materials" sent to him and "realized" he was "supposed to be at a hearing on 8-28-17." However, the employer's statement fails to establish that it was beyond its representative's reasonable control to review the August 14, 2017 notice of hearing prior to the hearing, appear at the hearing, and offer its information into evidence at that time. The employer's request for EAB to consider the employer's new information therefore is denied. EAB considered only information received into evidence at the hearing 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-91543 is affirmed.

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

DATE of Service: September 26, 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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