

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1115

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 21, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 120749). The employer filed a timely request for hearing. On August 29, 2017, ALJ M. Davis conducted a hearing, at which claimant failed to appear, and on August 30, 2017 issued Hearing Decision 17-UI-91552, concluding claimant's discharge was for misconduct. On September 18, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

In her written argument, claimant complained that she did not receive notice of the hearing and had "zero information that my previous employer was appealing," and so was unable to offer evidence into the hearing record. Claimant's complaint is construed as a request for EAB to consider new information under OAR 471-041-0090 (October 29, 2006). OAR 471-041-0090(2)(b) 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. Claimant offered no circumstantial evidence to support her implied assertion that the notice of hearing, though mailed to claimant at her address of record in Redmond, Oregon, was not delivered. Documents sent through the U.S. Postal service are presumed to have been received by the addressee, subject to evidence to the contrary. OAR 137-003-0520(9). Claimant's bare assertion of non-receipt is insufficient to overcome the presumption of receipt, and her request to have EAB to consider new information under OAR 471-041-0090 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-91552 is affirmed.

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

DATE of Service: October 17, 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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