

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1170

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 28, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 72833). The employer filed a timely request for hearing. On August 31, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for September 14, 2017 to the parties at their addresses of record with the Department. On September 14, 2017, ALJ Janzen conducted a hearing at which claimant failed to appear, and on September 15, 2017 issued Hearing Decision 17-UI-92607, concluding that claimant's discharge was for misconduct. On October 4, 2017, claimant filed an application for review with the Employment Appeals Board (EAB), and EAB notified the parties that it had received claimant's application for review.

On October 25, 2017, claimant submitted written argument for EAB's consideration. Under OAR 471-041-0080 (October 29, 2006), claimant was required to submit his written argument no later than October 24, 2017. In his written argument, claimant requested that the deadline for submitting his written argument be extended one day to October 25, 2017. Claimant's request is granted under OAR 471-041-0080(4), which states that, at the discretion of EAB, the time allowed for submitting written arguments may be extended for one or more periods, not to exceed a total of 14 days.

In his argument, claimant submitted and asked EAB to consider new information regarding his work separation, asserting that he failed to appear at the hearing because he was "in the process of moving" and did not "receive" the August 31, 2017 notice of hearing until it was "too late." Under 471-041-0090 (October 29, 2006), however, EAB may consider claimant's new information only if he establishes that factors or circumstances beyond his reasonable control prevented him from appearing at the hearing and offering the information into evidence at that time. Claimant's explanation for failing to appear at the hearing does not establish that the notice of hearing was not delivered to his address of record with the Department in a timely manner. Nor does his explanation show that his failure to appear was due to other factors or circumstances beyond his reasonable control, and not, for example, his own failure to check for mail delivered to his address of record in a timely manner, keep track of mail delivered to that

address, or open and read that mail in a timely manner, while he was in the process of moving. Claimant's request for EAB to consider his 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-92607 is affirmed.

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

DATE of Service: November 3, 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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