

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1255

Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 11, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 153529). Claimant filed a timely request for hearing. On October 3, 2017, the Office of Administrative Hearings (OAH) mailed the parties notice of a hearing scheduled for October 16, 2017. On October 16, 2017, ALJ S. Lee conducted the hearing, at which the employer failed to appear, and on October 18, 2017 issued Hearing Decision 17-UI-94871, concluding the employer discharged claimant, but not for misconduct. On October 31, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer submitted written argument in which it asked EAB to consider new information regarding claimant's work separation. OAR 471-041-0090(2) (October 29, 2006) allows EAB to consider information not received into evidence at the hearing only if the party offering the information establishes that factors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing. The employer asserted that it failed to appear at the October 16, 2017 hearing and offer its information into evidence at that time because it did not receive the October 3, 2017 notice of hearing in the mail. However, 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). The employer's bare assertion, without supporting evidence, that it did not receive the notice of hearing is insufficient to overcome that presumption. The employer's request for EAB to consider its 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-94871 is affirmed.

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

DATE of Service: November 22, 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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