

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1297

Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 28, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer suspended claimant for misconduct (decision # 110324). On October 2, 2017, the Department served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 112221). Claimant filed timely requests for hearing on both decisions. On November 1, 2017, ALJ Micheletti conducted a hearing on decision # 110324 at 1:30 p.m., at which the employer failed to appear, and a hearing on decision # 112221 at 2:30 p.m., at which both parties appeared. On November 1, 2017, the ALJ issued Hearing Decision 17-UI-96044 concluding claimant's suspension was not for misconduct, and Hearing Decision 17-UI-96082 concluding claimant's discharge was not for misconduct. On November 7, 2017, the employer filed applications for review of both decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-96044 and 17-UI-96082. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-1296 and 2017-EAB-1297).

The employer requested that EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing, on the grounds that the "hearing was scheduled through our office without notice to myself, resulting in no chance to submit supporting evidence." The employer's witness's office's failure to notify him of the hearing that the office scheduled for him is not a circumstance beyond the employer's reasonable control, however, and the request must therefore be denied. We note that even if we had allowed the request, the outcome of this matter would likely remain the same given that the employer's witness appeared at the 2:30 p.m. discharge hearing and provided comprehensive set of evidence about how and why claimant's employment ended before and around the time of both the suspension and the discharge, and based upon consideration of a consolidated record in this matter we agree with the ALJ that neither the suspension nor the discharge was for misconduct.

EAB reviewed the entire consolidated hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decisions under review are **adopted**.

DECISION: Hearing Decisions 17-UI-96044 and 17-UI-96082 are affirmed.

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

DATE of Service: December 4, 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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