

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1312

Affirmed
Disqualification

PROCEDURAL HISTORY: On July 31, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for a disqualifying act (decision # 131121). Claimant filed a timely request for hearing. On November 1, 2017, ALJ M. Davis conducted a hearing, and on November 2, 2017 issued Hearing Decision 17-UI-96009, affirming the Department's decision. On November 14, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

In written argument, claimant provided the names, contact information and attestations of three individuals who were with him between June 23, 2017 and June 25, 2017, all of whom attested that he did not have a history of drug use and did not use drugs during that period of time. Claimant also provided new documentation of previous negative drug test results. Although information about claimant's drug test history and activities during June 23rd through June 25th was placed into the record during the hearing, the documentation amounts to new information that was not part of the hearing record, and claimant did not show that factors or circumstances beyond his reasonable control prevented him from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision.

In his written argument, as at the hearing, claimant indicated he underwent a drug evaluation and treatment program. To any extent the argument suggests he should be excused from disqualification under ORS 657.176(9)(b)(A) by reason of his participating in drug treatment, the drug treatment exception only applies when individuals are participating in treatment within 10 days of the work separation. In this case, claimant was not participating in treatment until after the 10-day period had lapsed. Despite claimant's credible and substantiated refutation that he knowingly ingested illegal drugs, ORS 657.176(9) and OAR 471-030-0125 do not contain any other exceptions from disqualification for individuals who test positive for drugs in connection with employment. Applied to the facts of this case as developed at the hearing, the law and rules require a disqualification from benefits.

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-96009 is affirmed.

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

DATE of Service: December 13, 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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