

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1336

Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 29, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 131234). Claimant filed a timely request for hearing. On October 12, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for October 24, 2017. On October 24, 2017, ALJ Murdock conducted a hearing at which the employer failed to appear, and on October 31, 2017 issued Hearing Decision 17-UI-95809, concluding claimant's discharge was not for misconduct. On November 17, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

In written argument, the employer asked for a new hearing on the grounds that it's designated representative made an error that caused him or her to miss the hearing. The employer's request for relief is construed as a request to have EAB consider additional evidence under OAR 471-041-0090 (October 29, 2006), which 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. In support of its request, the employer wrote that due to a misunderstanding its witness thought she would receive a call from the ALJ to participate in the hearing; however, the notice of the hearing OAH mailed to the employer stated, "At the time of hearing, you must call" the designated phone number. *See* Notice of Hearing (emphasis in original). Because human error of the sort that cause the employer to miss the hearing is considered to be within a party's reasonable control to avoid, the employer's request to have EAB consider its additional evidence must be denied, and we reached this decision based upon our review of the hearing record. ORS 657.275(2).

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-95809 is affirmed.

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

DATE of Service: November 21, 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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