

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1387-R

Affirmed on Reconsideration
No Disqualification

PROCEDURAL HISTORY: On October 13, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 143945). Claimant filed a timely request for hearing. On November 22, 2017, ALJ S. Lee conducted a hearing, at which the employer failed to appear, and on November 28, 2017 issued Hearing Decision 17-UI-97696, concluding claimant's discharge was not for misconduct. On December 1, 2017, the employer filed an application for review with the Employment Appeals Board (EAB). On December 7, 2017, EAB issued Appeals Board Decision 2017-EAB-1387, affirming the hearing decision. On December 11, 2017, the employer filed a timely written argument. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

In its written argument, the employer presented a significant amount of new information about the circumstances of claimant's work separation and argued that the discharge was for misconduct, and claimant therefore should be denied unemployment insurance benefits. EAB may consider new information that is not part of the record if the information is relevant and material to EAB's determination *and* the party offering the information demonstrates that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. OAR 471-040-0090 (October 29, 2006). Since the employer failed to appear at the hearing to present the new information, the employer would need to show, in essence, that appearing at the hearing was beyond the employer's reasonable control. The employer's director of services wrote in the employer's argument, "I regret that I did not return to the office in time to attend the telephone hearing," but did not explain how being away from the office prevented her from attending the telephone hearing or establish that being away from the office was because of a circumstance beyond her control. Absent such information, the employer has failed to show that EAB may consider its new information. The employer's request for EAB to consider new information is, therefore, denied, and, on reconsideration, EAB reached its decision in this case based only upon information received into evidence at the hearing.

On reconsideration, EAB re-reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: On reconsideration, Hearing Decision 17-UI-97696 is affirmed.

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

DATE of Service: December 19, 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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