

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1459**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On August 11, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 141814). Claimant filed a timely request for hearing. On November 8, 2017, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for November 22, 2017. On November 22, 2017, ALJ Janzen conducted a hearing at which the employer failed to appear, and on November 27, 2017 issued Hearing Decision 17-UI-97563 concluding the employer discharged claimant, but not for misconduct. On December 18, 2017, the employer filed a timely application for review with the Employment Appeals Board (EAB).

The employer submitted written argument with its application for review, in which its asked for a new hearing, asserting that it failed to appear at the November 22, 2017 hearing because its representative “was out of state and did not get” the November 8, 2017 notice of hearing until “well after” the hearing date. The employer’s request is construed as a request for consideration of new information under OAR 471-040-0090(2) (October 29, 2006). Under that rule, new, relevant and material information may be considered if the party offering the information establishes that circumstances beyond the party’s reasonable control prevented it from offering the information into evidence at the hearing.

In its request, the employer’s representative stated that because decision # 141814 was “in our favor, I thought this was over[,] [especially because this was a clear-cut case of OLCC Rules and Regulations for immediate termination,” that the employer “consulted with our OLCC Investigator at length to confirm that our actions were appropriate,” and that “[a]n appeal wasn’t expected.” However, although the employer may not have expected claimant to request a hearing on decision # 141814, its failure to appear at the hearing ultimately was due to its failure to process its representative’s incoming mail while she was out of state, and the employer failed to show that it was beyond its reasonable control do so. The employer therefore failed to establish that circumstances beyond its reasonable control prevented it from appearing at the hearing and offering its information at the hearing into evidence at that time. The employer’s request for consideration of new information under OAR 471-040-0090(2) 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-97563 is affirmed.

J. S. Cromwell and D. P. Hettle;  
S. Alba, not participating.

**DATE of Service: January 16, 2018**

**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](http://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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