

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0004

Affirmed
No Disqualification

PROCEDURAL HISTORY: On August 25, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 75419). Claimant filed a timely request for hearing. On October 31, 2017, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for November 17, 2017. On November 14, 2017, the employer requested that OAH postpone the hearing due to the unavailability of its witness. On November 17, 2017, ALJ Janzen convened the hearing, but postponed it at the employer's request. On November 22, 2017, OAH served notice that the hearing had been rescheduled to December 8, 2017. On December 8, 2017, ALJ Janzen conducted a hearing at which the employer failed to appear, and on December 12, 2017 issued Hearing Decision 17-UI-98853, concluding the employer discharged claimant, but not for misconduct. On January 2, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer requested "a new hearing to present testimony in this matter," asserting that it's "witness was unavailable at the time of the hearing and therefore was not able to call in and participate." The employer's request is construed as a request for consideration of new information under OAR 471-040-0090 (October 29, 2006), which states, in relevant part, that new information may be considered only if the party offering the information establishes that factors or circumstances beyond the party's reasonable control prevented the party from offering the information into the hearing record. Without more, the employer's assertion that its witness was "unavailable" is not sufficient to show that his or her unavailability was due to factors or circumstances beyond the employer's reasonable control. Nor did the employer show that it was beyond its reasonable control to appear at the hearing and offer its information into evidence by other means, or, if necessary, request another postponement, or ask that the hearing be continued. Absent such showings, the employer failed to establish that factors or circumstances beyond its reasonable control prevented it from offering its information into the hearing record. The employer's request for consideration of new information under OAR 471-040-0090 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-98853 is affirmed.

J. S. Cromwell and D. P. Hettle

DATE of Service: January 5, 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. 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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