

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0116

Affirmed
Disqualification

PROCEDURAL HISTORY: On December 11, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 142611). The employer filed a timely request for hearing. On January 9, 2018, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for January 23, 2018. On January 23, 2018, ALJ Jarry conducted a hearing, at which claimant failed to appear, and on January 24, 2018 issued Hearing Decision 18-UI-101633, concluding that claimant's discharge was for misconduct. On January 31, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

In written argument, claimant asked for a new hearing on the grounds that although she intended to participate in the January 23rd hearing, she missed it because she thought the ALJ would call her at the designated time, and did not realize she needed to place the call. Claimant'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. The notice of hearing OAH mailed to claimant stated the date and time of the hearing, and stated, "At the time of the hearing, you must call 1-877-622-4041." (Emphasis in original.) Because the instruction was clear, and human error of the sort that caused claimant to miss the hearing is considered to be within a party's reasonable control to avoid, claimant's request to have EAB consider its additional evidence must be 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 18-UI-101633 is affirmed.

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

DATE of Service: February 8, 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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