

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0368

Affirmed
No Disqualification

PROCEDURAL HISTORY: On February 27, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 84232). Claimant filed a timely request for hearing. On March 22, 2018, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for April 5, 2018. On April 5, 2018, ALJ Turner conducted a hearing, at which the employer failed to appear, and issued Order No. 18-UI-106730, concluding that claimant's discharge was not for misconduct. On April 13, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer asked that the hearing be reopened to allow the employer the opportunity to present evidence about claimant's discharge. The employer's request for relief is construed as a request to have EAB consider new information 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 her request, the employer explained that she was sick on April 5th and intended to appear at the hearing despite being ill, but because she was sick and her "head and brain were far from being clear" she "misunderstood the telephone hearing process" and did not call in to the hearing, and when she "realized my mistake" and called about ten minutes later, it "was too late." The employer's circumstances are understandable. However, the notice of hearing clearly states "you must call" into the hearing, and provides specific instructions to follow up within five minutes of the scheduled time for the hearing if the parties had difficulty doing so. Given the clarity of the instructions, we cannot say that it was not within the employer's reasonable control to follow them. The employer therefore did not establish that EAB should consider its new information under OAR 471-041-0090, and the request is therefore 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: Order No. 18-UI-106730 is affirmed.

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

DATE of Service: April 26, 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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