

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0514

Affirmed
No Disqualification

PROCEDURAL HISTORY: On March 29, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily quit work without good cause (decision # 125356). Claimant filed a timely request for hearing. On May 3, 2018, ALJ Wymer conducted a hearing at which the employer failed to appear, and on May 4, 2018 issued Order No. 18-UI-108762, concluding claimant voluntarily left work with good cause and was not disqualified from receiving benefits. On May 17, 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 because it had failed to attend the hearing. 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 information 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 its request, the employer stated that it had contacted the Department on April 30th to explain that the employer was unable to attend the hearing due to business needs. However, the employer did not explain or show that it contacted the Office of Administrative Hearings (OAH), which had scheduled the hearing, to request that the hearing be postponed or rescheduled, nor did the employer establish that OAH's failure to do so was an abuse of discretion under the circumstances. The employer's request is therefore denied.

We note that the employer argued that it wanted the hearing reopened to present evidence not considered in the Order's findings of fact, specifically that "[t]he employment agreement that we presented" to the claimant "did not contain a non-compete clause and as a result . . . the findings in the case would change were I to have the opportunity to present facts not considered during the hearing." The employer failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision. Even if we had, however, the outcome of this decision would remain the same. The employer submitted the employment agreement into evidence, and the ALJ admitted the agreement as Exhibit 1. The agreement, which is in evidence, contained a clause titled "Restriction on Post Employment

Compensation” that specifically prohibited claimant from working for another employer in a similar business for a period of six months following the end of employment. ORS 653.295(7)(d) defines a “Noncompetition agreement” as “an agreement . . . between an employer and employee under which the employee agrees that the employee . . . will not compete with the employer in providing . . . services that are similar to the employer’s . . . services for a period of time or within a specified geographic area after termination of employment.” The employment agreement the employer required claimant to sign did just that, and it was, therefore, a noncompetition agreement. The ALJ did not err in so finding.

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

DECISION: Order No. 18-UI-108762 is affirmed.

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

DATE of Service: May 25, 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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