

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0518

Affirmed
Disqualification

PROCEDURAL HISTORY: On March 29, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 140222). On April 3, 2018, claimant filed a timely request for hearing. On April 9, 2018, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for April 23, 2018 at 1:30 p.m. On April 23, 2018, ALJ Schmidt conducted the hearing, and on April 24, 2018 issued Order No. 18-UI-108041, affirming the Department's decision. On May 14, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

In written argument, claimant stated that the person he attempted to call as a witness at the hearing, but whom the ALJ was unable to contact by telephone, is now "available to make a statement." We construe claimant's statement as a request for consideration of new information regarding his decision to quit working for the employer. However, such information may only be considered when the party offering the information establishes that factors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing. *See* OAR 471-041-0090 (October 29, 2006).

In support of his request, claimant asserted that his witness was at work for the employer when the ALJ attempted to contact her, and was not comfortable answering the phone. However, claimant did not assert or show that he made any attempt before requesting the hearing to determine what dates and times his witness would be available testify, and request that the hearing be scheduled at a time she was available. Claimant did not assert or show that he made any attempt after receiving the notice of hearing to determine whether his witness would be available to testify at that time, and, if not, ask OAH to postpone the hearing to a time when she would be available. Claimant did not assert or show that he made any attempt to have his witness provide a written statement for claimant to offer into evidence at the hearing. And at hearing, the ALJ allowed claimant an opportunity to provide, through his own testimony, at least some of the information that his witness would have provided, but claimant essentially declined to do so. Audio Record at 18:00-21:30. Claimant therefore failed to establish that

factors or circumstances beyond his reasonable control prevented him from offering his information into evidence at the hearing. His request for consideration of new information therefore is denied.

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-108041 is affirmed.

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

DATE of Service: June 13, 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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