

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0675**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On April 27, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 101423). The employer filed a timely request for hearing. On May 22, 2018, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for June 8, 2018. On June 4, 2018, the Office of Administrative Hearings OAH issued “CHANGE IN NOTICE OF HEARING” notice of a hearing scheduled for June 20, 2018 at 8:15 a.m. On June 20, 2018, ALJ Wyatt conducted a hearing, at which claimant failed to appear, and on June 28, 2018, issued Order No. 18-UI-112308, affirming the Department’s decision. On July 3, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

**EVIDENTIARY MATTER.** The ALJ admitted Exhibits 1 and 2 into evidence, but failed to mark them as such. As a clerical matter, we have identified the exhibits based on the ALJ’s description of them (Audio Record ~ 9:00 to 10:30), marked them as Exhibit 1 and Exhibit 2, and, for informational purposes, attached copies of the exhibits to decisions mailed to the parties.

**WRITTEN ARGUMENT.** In written argument, the employer asserted that the ALJ erred in affirming the Department’s decision, citing the ALJ’s reasoning, which was as follows:

“[T]he hearing record contains no information regarding the legal status of the case after claimant’s arrest, such as whether claimant pled guilty or was convicted of the charge for which he was arrested. The hearing record also contains no evidence concerning claimant’s actual activities that may have led to his arrest...”

Order No. 18-UI-112308 at 3. The employer disagreed with the ALJ for two reasons. First it asserted such “after the fact” evidence was not relevant because it would have taken place after claimant’s termination of employment. However, a plea of guilty or judgment of conviction, if such existed in this case, would logically relate to facts that occurred prior to claimant’s termination, and for that reason, might very well be relevant. Second, it asserted, that a news article in the record that described

claimant's alleged indictment on charges concerning child pornography "is sufficient proof to support [the employer's] case." However, such hearsay information is not inherently reliable for hearing purposes and certainly is not as reliable as certified copies of court records, such as charging instruments, guilty pleas or judgments of conviction potentially relating to a particular defendant, which are often offered as evidence by employers. Moreover, it is possible that the alleged case involving claimant had been dismissed, without a conviction. For these reasons, we agree with the ALJ's order and analysis.

EAB reviewed the entire hearing record, including Exhibits 1 and 2. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

**DECISION:** Order No. 18-UI-112308 is affirmed.

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

**DATE of Service:** August 6, 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](http://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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