

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0698

Affirmed
No Disqualification

PROCEDURAL HISTORY: On May 16, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 74650). Claimant filed a timely request for hearing. On June 11, 2018, the Office of Administrative Hearings (OAH) served, by mail, notice of a hearing scheduled for June 21, 2018. On June 21, 2018, ALJ Scott conducted a hearing at which the employer failed to appear, and on June 25, 2018 issued Order No. 18-UI-111989 concluding that claimant's discharge was not for misconduct. On July 11, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record. In its application for review, the employer stated that its representative missed the June 21st hearing because he did not "personally" receive the June 11th notice of hearing until June 22nd, and that claimant lied at the hearing. We construe those statements as a request for EAB to consider new information regarding claimant's work separation under OAR 471-041-0090 (October 29, 2018). Under OAR 471-041-0090(2), however, new information may be considered only when the party offering the information establishes that factor or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing.

Here, the notice of hearing was mailed to the employer's address in Eugene, Oregon ten days before the hearing. The employer's assertion that its representative did not "personally" receive the notice of hearing until after the hearing suggests that the employer received the notice in the mail before the hearing but did not forward the notice to its representative until after the hearing. The employer's handling of its mail, including the notice of hearing, was within its reasonable control. The employer therefore failed to establish that its factors or circumstances beyond its reasonable control prevented it from appearing at the hearing and offering its information into evidence at that time. The employer's request for EAB to consider new information regarding claimant's work separation therefore is denied.

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

DECISION: Order No. 18-UI-111989 is affirmed.

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

DATE of Service: August 2, 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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