

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0783

Affirmed ~ Confirmada
No Disqualification ~ No Descalificación

PROCEDURAL HISTORY: On June 27, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 101321). Claimant filed a timely request for hearing. On July 12, 2018, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for July 25, 2018 to the parties at their addresses of record. On July 25, 2018, ALJ Scott conducted a hearing, at which the employer failed to appear, and on July 31, 2018 issued Order No. 18-UI-114058, concluding that claimant's discharge was not for misconduct. On August 8, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer's representative asked for another hearing because they had no advance notice of the hearing. We construe the employer's request as a request to submit additional information to EAB under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. Documents sent through the U.S. Postal service are presumed to have been received by the addressee, subject to evidence to the contrary. OAH mailed the notice of hearing to the employer's post office box in Saint Louis, Missouri, which was and is its address of record with the Department, and allowed adequate time for its delivery. The employer's representative provided no circumstantial evidence to support the implied assertion that the lack of notice was the result of OAH's failure to send the notice, or the U.S. Postal Service's failure to deliver the notice of hearing to the post office box, as opposed to inadvertence or neglect in the employer's mail-handling. Without supporting evidence, we cannot conclude that the representative's lack of notice was a circumstance beyond the employer's reasonable control. The employer's request to consider new information under OAR 471-041-0090 is, therefore, 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-114058 is affirmed.
La Orden de la Audiencia 18-UI-114058 queda confirmada.

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

DATE of Service: August 29, 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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NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

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