

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0991

Affirmed
No Disqualification

PROCEDURAL HISTORY: On September 4, 2018, the Oregon Employment Department (the Department) served, by mail, notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 113447). Claimant filed a timely request for hearing. On September 18, 2018, the Office of Administrative Hearings (OAH) served, by mail, notice of a hearing scheduled for October 2, 2018. On October 2, 2018, ALJ Janzen conducted a hearing at which the employer failed to appear, and issued Order No. 18-UI-117563 concluding the employer discharged claimant, not for misconduct. On October 2, 2018, OAH mailed Order No. 18-UI-117563 to the parties. On October 15, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer stated it failed to appear at the hearing because the notice of hearing was mailed to its Goshen, Indiana location instead of the Pendleton, Oregon location where claimant worked, which is responsible for its own matters with the Department, and where it was not received until after the hearing had taken place.

The employer's statement is construed as request for consideration of new information regarding claimant's work separation. However, such information may only be considered if the employer establishes its failure to appear at the October 2, 2018 was due to factors or circumstances beyond its reasonable control. *See* OAR 471-040-0090(2) (October 29, 2006).

OAH mailed the September 18, 2018 notice of hearing to the employer's address of record with the Department, which was the employer's Goshen, Indiana location, as required under OAR 471-040-0015(1) (August 1, 2004).¹ The employer did not assert or show that it had informed the Department that its Pendleton, Oregon location was responsible for its own matters with the Department, and that

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

documents relating to those matters should be mailed to that address. In addition, OAH mailed the notice of hearing to the employer's Goshen Indiana location 14 days before the hearing. The employer filed its application for review of Order No. 18-UI-117563 less than 14 days after OAH mailed it to the employer's Goshen, Indiana location, indicating that the employer had time to forward the notice of hearing to its Pendleton, Oregon location before the hearing. The employer therefore failed to establish that its failure to appear at the October 2, 2018 hearing was due to factors or circumstances beyond its reasonable control. The employer's request for consideration of new information regarding claimant's work separation 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-117563 is affirmed.

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

DATE of Service: November 16, 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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