

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0201

Reversed & Remanded

PROCEDURAL HISTORY: On December 2, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision #121546). Claimant filed a timely request for hearing. On January 29, 2014, ALJ Erwin conducted a hearing, and on January 30, 2014 issued Hearing Decision 14-UI-09507, concluding the employer discharged claimant, but not for misconduct. On February 3, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer included new information, specifically, a Secret Indictment for Baker County Case No. 13-801, Oregon State Police Incident Report SP13023810, Supplementary Incident Report (Search Warrant Execution 10/16/2013), Supplementary Incident Report (Return of additional stolen property to Oregon Trail Sports), Supplementary Incident Report (Rustin Smith interview), Supplementary Incident Report (Jarrod Linscott information & complaint), Supplementary Incident Report (Oregon Trail Sports list of values), Storage Agreement, seven Oregon State Police Property Reports, and a USPS receipt. The employer submitted written argument with the new information stating that it shows theft values, contains an alleged admission, and identifies other victims. The employer further argues that the new information was requested from the district attorney prior to hearing, but was not made available prior to the hearing date.

EAB may only consider new information if it is relevant and material to EAB's determination, and factors or circumstances beyond the employer's reasonable control prevented it from offering the information into evidence at the hearing. OAR 471-041-0090(2) (October 29, 2006). The new information is relevant and material to the issue of whether the employer discharged claimant for misconduct, and, because the employer's district attorney did not release the documents to the employer until after the hearing, presumably because they were part of an ongoing criminal investigation, it was beyond the employer's reasonable control to offer the information during the hearing.

The employer's request for EAB to consider its new information therefore is allowed. Due process of law requires that claimant be given the opportunity to respond to the new information. Hearing Decision 14-UI-09507 therefore is reversed, and this matter remanded pursuant to ORS 657.275(1) for a new hearing and hearing decision based upon the record of the proceedings before OAH. The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 14-UI-09507 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

DECISION: Hearing Decision 14-UI-09507 is set aside, and this matter remanded for further proceedings consistent with this order.

Tony Corcoran and D. E. Larson,
Susan Rossiter, not participating.

DATE of Service: March 6, 2014

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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: The above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.