

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1018

Reversed & Remanded

PROCEDURAL HISTORY: On April 11, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant but not for misconduct (decision # 133802). The employer filed a timely request for hearing. On May 21, 2014, ALJ Monroe conducted a hearing in which the claimant did not participate, and on May 28, 2014, issued Hearing Decision 14-UI-18519, concluding that the employer discharged claimant for misconduct. On June 11, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review, claimant explained that she apparently missed the hearing because she “was in the emergency room for two days and they wanted to keep me longer. Thought to be apendicitis [sic].” Due process requires that all parties be given a full opportunity for a fair hearing. ORS 657.270(4). Additional evidence is needed to determine if the situation claimant describes – an emergency room visit involving suspected appendicitis – constituted circumstances beyond claimant’s control that prevented her from participating in the hearing. Hearing Decision 14-UI-18519 is therefore reversed and the matter remanded pursuant to ORS 657.275(1) for a new hearing and hearing decision on claimant’s failure to appear at the May 21, 2014 hearing. If the ALJ determines that claimant had good cause for failing to appear, the ALJ must also conduct a hearing and issue a hearing decision that addresses claimant’s failure to appear and the merits of the case.

The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 14-UI-18519 or return this matter to the EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to the EAB.

DECISION: Hearing Decision 14-UI-18519 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and J. S. Cromwell;
Tony Corcoran, not participating.

DATE of Service: June 17, 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 court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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