

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1060

Reversed & Remanded

PROCEDURAL HISTORY: On May 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged but not for misconduct (decision # 102520). The employer filed a timely request for hearing. On June 12, 2014, ALJ M. Davis conducted a telephone hearing, and on June 13, 2014, issued Hearing Decision 14-UI-19643, concluding that claimant was discharged for misconduct. On June 18, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

In his application for review, claimant states that he was dropped from the telephone line on which the hearing was conducted. A review of the audio recording of the hearing shows that claimant dropped off the line before he had an opportunity to testify. (Audio 19:06). The ALJ waited approximately six minutes to see if claimant would rejoin the line. (Audio 25:19) When claimant did not, the ALJ ended the hearing.

ORS 657.270 requires that a claimant be given a reasonable opportunity for a fair hearing. Claimant may have been denied that opportunity if he was dropped from the telephone line on which the hearing was conducted due to no fault of his own, and if he tried unsuccessfully to rejoin the hearing. Under the authority granted to us by ORS 657.275(1), we reverse Hearing Decision 14-UI-19643 and remand the matter for a new hearing and hearing decision. At the hearing, the ALJ must inquire into the reasons why claimant was dropped from the telephone line on which the June 13 hearing was conducted, and what efforts, if any, claimant made to rejoin the line. If the ALJ determines that claimant's inability to continue his participation in the hearing occurred because of circumstances beyond claimant's reasonable control, the ALJ may take additional evidence on the merits of the case.

DECISION: Hearing Decision 14-UI-19643 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 19, 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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