

**EMPLOYMENT APPEALS BOARD DECISION**  
**2014-EAB-1395**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On July 14, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 95015). Claimant filed a timely request for hearing. On July 17, 2014, the Office of Administrative Hearing issued notice of a hearing scheduled for August 6, 2014 at 1:30 p.m. On July 29, 2014, ALJ Frank conducted a hearing in which the employer did not participate, and on August 6, 2014, issued Hearing Decision 14-UI-22926, concluding that the employer discharged claimant, but not for misconduct. On August 22, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

In the application for review, the employer's representative asked for a new hearing to present evidence regarding the claimant's work separation. The employer's representative explained that he was the person assigned to appear at the hearing; because he was on vacation during the week of July 28 through August 1, 2014, he arranged for his partner to appear at the hearing. On the morning of July 29, the partner was notified that his mother, who has dementia and lives in an assisted living facility, was ill and that he needed to take her to the emergency room for treatment. The partner took his mother to the emergency room thinking that the visit would be over in time for him to participate in the hearing. The emergency room visit took longer than anticipated, however, and the partner missed the hearing.

Under OAR 471-041-0090 (October 29, 2006), EAB may consider information not received into evidence at the hearing if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at hearing. Here, the employer took reasonable steps to participate in the hearing. The employer's representative, who originally planned to appear but was on vacation on the day of the hearing, arranged for his partner to participate in his place. The partner was unable to appear at the hearing, however, because his mother's emergency room visit took longer than expected. The illness of his mother, her need for emergency room treatment, and the length of time it took to treat her were circumstances over which the partner had no control. To provide the employer with an opportunity to present new evidence, Hearing Decision 14-UI-22926 will be reversed, and this matter remanded under OAR 657.275(1) for a new hearing.

**Hearing Decision 14-UI-22926** is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: September 10, 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](http://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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