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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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<p>EMPLOYMENT APPEALS BOARD DECISION 2014-EAB-1719-R</p>
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Reversed & Remanded

PROCEDURAL HISTORY: On September 18, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 125538). Claimant filed a timely request for hearing. On October 16, 2014, ALJ Lohr conducted a hearing in which the employer did not participate, and issued Hearing Decision 14-UI-27055, concluding that the employer discharged the claimant, but not for misconduct. On October 27, 2014, the employer filed an application for review with the Employment Appeals Board (EAB). On November 6, 2014, EAB issued Appeals Board Decision 2014-EAB-1719 in which it affirmed the hearing decision under review. On November 24, 2014, the employer filed a request for reconsideration.

CONCLUSION AND REASONS: Reconsideration of Appeals Board Decision 2014-EAB-1719 is granted, and this case reversed and remanded for further proceedings.

In its application for review of Hearing Decision 14-UI-27055, the employer's representative asked for a new hearing, contending that it failed to appear at the October 16 hearing because a representative from the Office of Administrative Hearings (OAH) told the employer's representative that the employer's request to postpone the hearing had been granted, and that a new hearing would be scheduled. EAB denied the request because the employer failed to provide details concerning the postponement request, such as copies of correspondence or notes confirming telephone calls.

In its request for reconsideration, the employer's representative again asks for a new hearing. In support of its request, the employer provided a statement from its representative, Klaren Bentley, describing a telephone conversation with an OAH employee during which the OAH employee told the representative that the employer's postponement request had been granted, and that a new hearing would be scheduled. The employer's representative also stated that after Appeals Board Decision 2014-EAB-1719 was issued, the representative again contacted OAH; the OAH employee checked case notes and confirmed

that these notes indicated the postponement request had been granted “but for some unknown reason the hearing went forward anyway.”

Under ORS 657.290(3), EAB may grant reconsideration to correct, among other things, a material error of fact or law. The record here shows that OAH erred when it granted the employer’s postponement request, but failed to reschedule the hearing and notify the parties of the new hearing date. As a result of this mistake, the employer failed to appear at the October 16 hearing.

Because OAH made a material error of fact and law, reconsideration is granted. Hearing Decision 14-UI-27055 is reversed and this matter remanded under ORS 657.275(1) for a new hearing and hearing decision.

DECISION: Hearing Decision 14-UI-27055 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: December 23, 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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