

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1915

Reversed & Remanded

PROCEDURAL HISTORY: On October 28, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was disqualified from receiving unemployment insurance benefits (decision # 93317). Claimant filed a timely request for hearing. On November 26, 2014, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for 3:30 p.m. on December 11, 2014. On December 11, 2014, ALJ Wipperman conducted a hearing in which the employer did not participate, and on December 12, 2014, issued Hearing Decision 14-UI-30358, concluding that claimant was not disqualified from receiving unemployment insurance benefits. On December 18, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer asked for a new hearing, asserting that it missed the hearing because a “there was a horrible wind storm, our power and phones were out.” The employer’s request is construed as a request to have EAB to consider new information under OAR 471-04-0090 (October 29, 2006), which allows EAB to consider new information if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. A loss of telephone service and power due to a severe wind storm was a circumstance beyond the employer’s control. The employer’s request is, therefore, allowed. Due process of law requires that claimant be given an opportunity to respond to the employer’s request to have EAB consider new information, and to the information itself. Hearing Decision 14-UI-30358 is therefore reversed and this matter remanded under ORS657.275(1) for a new hearing and hearing decision based upon the record of the proceeding before the OAH..

DECISION: Hearing Decision 14-UI-30358 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: December 29, 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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