

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1958

Reversed & Remanded

PROCEDURAL HISTORY: On November 7, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 143131). The employer filed a timely request for hearing. On November 26, 2014, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for December 10, 2014, at 10:45 a.m. On December 10, 2014, ALJ Lohr conducted a hearing in which the claimant did not participate, and on December 12, 2014, issued Hearing Decision 14-UI-30272, concluding that claimant voluntarily left work without good cause. On December 24, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

In his application for review, claimant asked for a new hearing, explaining that on December 10, he “called to be a part of the appeals hearing. I could not get thru. I called the first number and did not get connected. At 10:47 I called the other number and I spoke to [OAH employee] and she said she would patch me thru. I waited on the phone to get connected for 20 minutes.” Claimant’s request is construed as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party presenting the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing.

The hearing notice that OAH issued told claimant that in order to participate in the hearing, he needed to call a particular number at the time the hearing was scheduled to begin and enter an access code. The hearing notice also told claimant that if the ALJ did not come on the line within five minutes, claimant should hang up and call another number. Although claimant followed these instructions, he was never connected to the hearing and unable to participate. The inability of the OAH to connect claimant with the ALJ was a circumstance beyond claimant’s reasonable control. Accordingly, his request to present new information is allowed. Due process of law requires that the employer be given the opportunity to respond to claimant’s request to have EAB consider new information, and to the information itself. Hearing Decision 14-UI-30272 is therefore reversed, and this matter remanded pursuant to ORS 657.275(1) for a new hearing and hearing decision based upon the record of the proceeding before the OAH.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 14-UI-30272 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

DECISION: Hearing Decision 14-UI-30272 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: January 6, 2015

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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