

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0390**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On February 4, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 94208). The employer filed a timely request for hearing. On March 19, 2015, ALJ S. Lee conducted a hearing in which claimant did not participate, and on March 24, 2015, issued Hearing Decision 15-UI-35664, concluding that the employer discharged claimant for misconduct. On April 3, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

In his application for review, claimant asked for a new hearing “due to illness at the time of the hearing.” 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 offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing.

Here, additional information is needed to determine if the circumstances that caused claimant to miss the hearing were beyond claimant’s reasonable control. It is necessary to know the specific illness claimant has or had at the time of the hearing. In addition, it is important to know how this illness prevented claimant from requesting postponement of the hearing or participating in the hearing despite being ill.

We therefore reverse and Hearing Decision 15-UI-35664 and remand this matter for a new hearing to pursue the inquiry described above regarding the circumstances that caused claimant to miss the hearing.

If the ALJ determines that these circumstances were beyond claimant's reasonable control, the ALJ must then conduct a hearing on the merits of claimant's work separation.

**DECISION:** Hearing Decision 15-UI-35664 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:** May 7, 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 Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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