

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0765

Reversed & Remanded

PROCEDURAL HISTORY: On April 23, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision #135420). The employer filed a timely request for hearing. On May 20, 2015, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for June 3, 2015. On June 3, 2015, ALJ Dorr conducted a hearing at which claimant failed to appear, and issued Hearing Decision 15-UI-39484, concluding that claimant voluntarily left work without good cause. On June 23, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

In her application for review, claimant asked that her failure to appear at the hearing be excused and that EAB “open the case for further review.” Claimant’s request is construed as a request to have EAB consider additional evidence 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. In support of her request, claimant stated that she did not appear at the hearing because “my mail in my P O Box was put into another box and was brought back after the date of the hearing. This is happening a lot at this post office in NE Portland.” Mail that claimant did not receive because it was misdirected through no fault of her own constitutes a circumstance beyond claimant’s reasonable control that prevented her from presenting evidence at the hearing. Claimant’s request is, therefore, allowed. Due process of law requires that the employer be given the opportunity to respond to claimant’s request to have the Board consider new information, and to the information itself. Hearing Decision 15-UI-39484 is therefore reversed, and this matter remanded to ORS 657.275(1) for a new hearing and hearing decision based upon the record of the proceeding before the OAH.

DECISION: Hearing Decision 15-UI-39484 is set aside, and this matter remanded for further proceedings consistent with this order.

DATE of Service: June 30, 2015

J. S. Cromwell and D. P. Hettle;
Susan Rossiter, not participating.

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. 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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