

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0932

Reversed & Remanded

PROCEDURAL HISTORY: On June 25, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 141425). Claimant filed a timely request for hearing. On July 15, 2015, the Office of Administrative Hearings (OAH) scheduled a telephone hearing for July 29, 2015 at 2:30 p.m. On July 29, 2015, ALJ Vincent conducted the hearing, at which the employer failed to appear, and on July 31, 2015 issued Hearing Decision 15-UI-42403, concluding the employer discharged claimant, but not for misconduct. On August 3, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

In written argument, the employer asserted that it failed to appear at the July 29, 2015 hearing because it was unable to connect with the hearing by telephone and, after making multiple attempts to connect, left messages seeking information on how to connect, but did not receive a return call until the following day. The employer further asserted that claimant prevailed at the hearing only because the employer was not there to offer information into evidence. We construe that assertion as a request to offer new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing of the party offering the information shows that circumstances beyond its reasonable control prevented it from presenting the information at the hearing. In this case, the employer's assertions regarding its failure to appear at the hearing indicate that circumstances beyond its reasonable control may have prevented it from appearing. However, more information from the employer is needed to make that determination, including what time the employer first attempted to connect to the hearing, what number it called, what time it stopped attempting to connect and called for information on how to connect, what number it called seeking that information, and the substance of its voice messages. Due process of law requires that claimant be given the opportunity to respond to the employer's request to offer new information, and, if necessary, to the employer's new information itself. Hearing Decision 15-UI-42403 therefore is reversed, and this matter remanded for a new hearing and hearing decision upon the record of the proceeding before OAH.¹

¹ **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 15-UI-42403, 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 15-UI-42403 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: August 10, 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. 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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