

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0944

Hearing Decisions 15-UI-41972 and 15-UI-41973 Reversed & Remanded

PROCEDURAL HISTORY: On April 23, 2015, the Oregon Employment Department (the Department) served notice of administrative decision # 94311, concluding that claimant quit work without good cause. On April 24, 2015, the Department served notice of administrative decision # 194859, assessing an overpayment based on decision # 94311, penalty weeks, and a monetary penalty. On May 13 2015, decision # 94311 became final without a request for hearing having been filed. On May 14, 2015, decision # 194859 became final without a request for hearing having been filed. On June 8, 2015, claimant filed late requests for hearing on decisions # 94311 and # 194859. On June 15, 2015, ALJ Kangas issued Hearing Decisions 15-UI-40030 and 15-UI-40027, dismissing claimant's late requests for hearing, subject to claimant's right to renew the requests by submitting a response to an appellant questionnaire attached to the decisions within 14 days. On June 25, 2015, claimant submitted a timely response. On July 6, 2015 the Office of Administrative Hearings (OAH) cancelled and vacated Hearing Decisions 15-UI-40030 and 15-UI-40027, and served notice of hearings on decisions # 94311 and # 194859 scheduled for July 21, 2015 at 9:30 a.m. and 10:45 a.m. On July 21, 2015, ALJ R. Davis conducted telephone hearings at which the employer failed to appear. On July 24, 2015, ALJ Davis issued Hearing Decisions 15-UI-41972 and 15-UI-41973, allowing claimant's late requests for hearing on decisions # 94311 and # 194859, concluding the employer discharged claimant, not for misconduct, and assessing no overpayment, penalty weeks or monetary penalty. On August 5, 2015, the employer filed applications for review of Hearing Decisions 15-UI-41972 and 15-UI-41973 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-41972 and 15-UI-41973. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-0944 and 2015-EAB-0945).

In written argument, the employer stated that it failed to appear at the July 21, 2015 hearings because its representative had problems with her vehicle that day which resulted in her having to walk to work, did not have the information with her to call into the hearings before arriving at work, and arrived at work after the hearings had ended. The employer further stated that no other employee had the information to call into the hearings, and asserted that claimant prevailed at the hearings only because the employer was not there to offer information into evidence. We construe the employer's assertion as a request for

EAB to offer new information into evidence 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 representative's problem with her vehicle was a circumstance beyond her reasonable control that prevented the employer from appearing at the hearings and offering information into evidence at that time. The employer's request to offer new information into evidence therefore is allowed. Due process of law requires that claimant be given the opportunity to respond to the employer's new information. Hearing Decisions 15-UI-41972 and 15-UI-41973 therefore are reversed, and these matters remanded for new hearings and hearing decisions upon the record of the proceedings before OAH.¹

DECISION: Hearing Decisions 15-UI-41972 and 15-UI-41973 are set aside, and these matters 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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¹ **NOTE:** The failure of any party to appear at the hearings on remand will not reinstate Hearing Decisions 15-UI-41972 or 15-UI-41973, or return this matter to EAB. Only timely applications for review of the subsequent hearing decisions will cause this matter to return to EAB.