

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0997**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On June 10, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision #82605). Claimant filed a timely request for hearing. On August 3, 2015, ALJ Murdock conducted a hearing at which the employer failed to appear, and on August 4, 2015, issued Hearing Decision 15-UI-42498, concluding that the employer discharged claimant, but not for misconduct. On August 21, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

In his application for review, the employer's representative included a letter in which he asked for a new hearing to provide evidence regarding claimant's work separation. The employer's request is construed as a request to have EAB consider new 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 its request, the employer representative explained that he was unable to attend the hearing because "my wife was in labor with our first child and I was in the hospital helping her all day. We were admitted Sunday August 2<sup>nd</sup> at 7 AM and she gave birth on Monday August 3<sup>rd</sup> at 8:11 PM to our son."

Further information is necessary to determine whether the employer was prevented by circumstances beyond its reasonable control from participating in the hearing, and this case will be remanded to the Office of Administrative Hearings so that an ALJ can obtain this information. On remand, the ALJ should ask what position the employer representative who was unable to attend the hearing holds with the employer, why his testimony concerning claimant's work separation was significant and necessary, and why another employee could not have provided evidence about claimant's work separation. In addition, the ALJ should inquire whether the individual who missed the hearing had access to a telephone during the over 37 hours he spent assisting his wife at the hospital, and, if so, why he could not contact an employee to ask that this person appear at the hearing or contact the Office of Administrative Hearings to request a postponement of the hearing. The ALJ should also question the employer representative about any other circumstances related to the birth of his son that may have prevented him from appearing at the hearing. If based on the answers to these questions the ALJ

determines that circumstances beyond the employer's reasonable control prevented the employer from appearing at the hearing, the ALJ should then conduct a hearing on the merits of decision #82605.

**DECISION:** Hearing Decision 15-UI-42498 is set aside, and this matter remanded for further proceedings consistent with this order.

**DATE of Service:** August 31, 2015

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

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 15-UI-42498 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.

**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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.