

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1259**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On June 4, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 114829). Claimant filed a timely request for hearing. On June 30, 2015, ALJ Wyatt conducted a hearing, and on July 8, 2015 issued Hearing Decision 15-UI-41226, reversing the Department's decision. On July 24, 2015, the employer filed an application for review with the Employment Appeals Board (EAB). On September 10, 2015, EAB issued Appeals Board Decision 2015-EAB-0893 in which it reversed Hearing Decision 15-UI-41226 and remanded the matter to the Office of Administrative Hearings (OAH) for further development of the record.

On September 28, 2015, ALJ Wyatt conducted a hearing in which the claimant did not participate, and on October 7, 2015, issued Hearing Decision 15-UI-45549, concluding that the employer discharged claimant for misconduct. On October 23, 2015, claimant filed an application for review with EAB.

With her application for review, claimant included a letter in which she explained that she was preparing for the October 7 hearing, "but I ended up missing it. My sister woke me up 2 hours later and told me I had a major seizure." Claimant's letter is construed as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing if the party offering the information demonstrates that circumstances beyond its reasonable control prevented it from presenting the information at the hearing. The seizure that claimant asserted she experienced constitutes a circumstance beyond her immediate control that prevented her from participating in the hearing. Due process of law requires that the employer be given an opportunity to respond to claimant's request to have the Board consider new information, and to the information itself. Hearing Decision 15-UI-45549 is therefore reversed, and this matter remanded under 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-45549 is set aside, and this matter remanded for further proceedings consistent with this order.

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 15-UI-45549 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.

Susan Rossiter and J. S. Cromwell.

**DATE of Service: October 29, 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.

**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.