

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1293

Reversed & Remanded

PROCEDURAL HISTORY: On September 3, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged, but not for misconduct (decision # 75240). The employer filed a timely request for hearing. On October 20, 2015, ALJ Murdock conducted a hearing in which claimant did not participate, and on October 22, 2015, issued Hearing Decision 15-UI-46376, reversing the administrative decision and concluding that the employer discharged for misconduct. On October 29, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a letter to EAB in which he asked that his hearing be reopened so that he can participate in it, asserting that he failed to appear for the hearing because he never received the hearing notice. 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 his request, claimant explained that he lives in an apartment complex with large banks of mailboxes which the letter carrier must unlock and open to place mail into individual mailboxes; when the mailboxes are opened, there are no numbers to identify each box. Claimant asserted that letter carriers who are unfamiliar with this system often place mail in the wrong boxes, and that it was likely that the hearing notice was put in another resident's mailbox. In any event, the notice of hearing addressed to claimant's address was returned by the U.S. Postal Service to the Office of Administrative Hearings, and claimant did not learn of the hearing date until after the hearing had already occurred. The problems with mail delivery that claimant described constitute circumstances beyond his reasonable control that prevented him from participating in and presenting evidence at the hearing. Claimant's request to present new evidence is therefore allowed. Due process of law requires that the employer have an opportunity to respond to claimant's request to present new information, and to the information itself. Hearing Decision 15-UI-46376 is therefore reversed, and this matter remanded pursuant 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-46376 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and J. S. Cromwell

DATE of Service: November 9, 2015

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 15-UI-46376 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. 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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