

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1369**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On September 23, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 94150). Claimant filed a timely request for hearing. On November 5, 2015, ALJ Shoemake conducted a hearing in which the employer did not participate, and on November 9, 2015, issued Hearing Decision 15-UI-47384, concluding that the employer discharged claimant, but not for misconduct. On November 18, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer included a statement in which it explained the reasons why it was unable to participate in the November 5 hearing, and provided information about claimant's work separation. The employer's statement 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 the employer's statement, the employer's human resources manager explained that she was prepared to participate in the hearing, but approximately 30 minutes before the hearing was scheduled to begin, "another employee needed my time due to a crisis in their life. I did not feel that pulling myself away from the employee in crisis was in the best interest of the current employee. Had I known it would take 2 hours of my time to help the employee I would have asked someone else to facilitate for [the employer]." The unexpected employee crisis and the length of time it took to deal with this crisis were circumstances beyond the control of the employer's representative that prevented her from participating in the hearing, from asking another employer representative to participate, or from calling in to request a postponement of the hearing. The employer's request to present new evidence is therefore allowed. Due process of law requires that claimant be given the opportunity to respond to the employer's request to have EAB consider new information, and to the information itself. Hearing Decision 15-UI-47384 is therefore reversed, and this matter remanded pursuant to ORS 657.275(1) for a new hearing and a hearing decision based upon the record of the proceeding before the ALJ.

**DECISION:** Hearing Decision 15-UI-47384 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and J. S. Cromwell

**DATE of Service: November 30, 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.

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