

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1413**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On October 20, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for committing a disqualifying act (decision # 135452). On October 22, 2015, claimant filed a timely request for hearing on decision # 135452. The Office Administrative Hearings (OAH) opened an electronic case tracking record, case number 2015-UI-41119, on claimant's hearing request and on November 2, 2015, issued notice of a hearing scheduled for November 16, 2015. On October 27, 2015, claimant filed a second request for hearing on decision # 135452. The OAH mistakenly opened a second electronic case tracking record, assigned it a different case number, 2015-UI-41433, and, on November 5, 2015, issued notice of a hearing scheduled for November 19, 2015.

By letter dated November 10, 2015, the OAH notified the parties that the second case concerning claimant's hearing request (15-UI-41433) had been opened in error, that the hearing scheduled for November 19, 2015 was cancelled, and that the hearing scheduled for November 16, 2015 would proceed. On November 16, 2015, ALJ Vincent conducted a hearing in which the employer did not participate, and on November 20, 2015, issued Hearing Decision 15-UI-48096, reversing the administrative decision and concluding that the employer discharged claimant, but not for misconduct. On December 3, 2015, the employer filed an application for review of Hearing Decision 15-UI-48096 with the Employment Appeals Board (EAB).

With its application for review, the employer's representative included a letter in which it asked for a new hearing. The employer's request is construed as a request to have EAB consider new evidence under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at a hearing if the party presenting the information demonstrates that circumstances beyond the party's reasonable control prevented it from presenting the information at the hearing. In support of its request to EAB, the employer's representative stated that it received two hearing notices, one scheduled for November 16, 2015 and the other for November 19, 2015, and "there was no other communication received from [sic] the state regarding that the hearing on the 19<sup>th</sup> was closed, and we have no reason to believe that the notice [of the November 19<sup>th</sup> hearing] that was sent to us on 11/10/15 was not the correct

notice.” The employer’s representative explained that because it never received notice that the November 19 hearing was cancelled, the representative submitted documents and appeared for a hearing on that date. When the representative was unable to connect with the ALJ, the representative contacted OAH personnel and learned that the November 19 hearing had been cancelled. As a result of OAH’s mistake in scheduling two separate hearings on the same hearing request, it appears that the employer’s representative reasonably believed that November 19 was the correct hearing date. Because the employer’s representative never received OAH’s November 10 correction letter, it was unaware that the November 19 hearing had been cancelled. Nor was the employer notified that the November 19 hearing had been canceled after the employer submitted documents to OAH in advance of the hearing – instead, OAH staff added the documents to the closed electronic case tracking record. The errors made by OAH constitute circumstances beyond the employer’s reasonable control that prevented it from presenting evidence at a hearing and the employer’s request is therefore allowed. Due process of law requires that claimant be given the opportunity to respond to the employer’s request to have the Board consider new information, and to the information itself. Hearing Decision 15-UI-48096 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 ALJ.

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 15-UI-48096 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.

**DECISION:** Hearing Decision 15-UI-48096 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and J. S. Cromwell

**DATE of Service:** December 14, 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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