

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1438

Reversed & Remanded

PROCEDURAL HISTORY: On July 27, 2015, the Oregon Employment Department (the Department) served 31 notices of 31 administrative decisions concluding claimant had good cause for refusing offers of unsuitable work on May 13, 2015 (decision # 113010), April 12, 2015 (decision # 91942), May 12, 2015 (decision # 112045), April 28, 2015 (decision # 102014), May 3, 2015 (decision # 103432), April 28, 2015 (decision # 102338), May 3, 2015 (decision # 104007), May 4, 2015 (decision # 104758), May 7, 2015 (decision # 150829), May 7, 2015 (decision # 105526), May 7, 2015 (decision # 110045), April 23, 2015 (decision # 101638), April 7, 2015 (decision # 83540), April 1, 2015 (decision # 80255), May 13, 2015 (decision # 112457), April 10, 2015 (decision # 90251), April 9, 2015 (decision # 84659), April 13, 2015 (decision # 92603), April 19, 2015 (decision # 94052), April 15, 2015 (decision # 93543), April 19, 2015 (decision # 94700), April 21, 2015 (decision # 101425), April 19, 2015 (decision # 94435), April 16, 2015 (decision # 93825), April 13, 2015 (decision # 92911), April 13, 2015 (decision # 92256), April 10, 2015 (decision # 90816), April 10, 2015 (decision # 85449), April 7, 2015 (decision # 84235), April 6, 2015 (decision # 83059), and April 3, 2015 (decision # 82038). The employer filed timely requests for hearing. On September 8, 2015, ALJ M. Davis conducted a consolidated hearing, and on September 10, 2015 issued Hearing Decisions 15-UI-44194, 15-UI-44162, 15-UI-44192, 15-UI-44179, 15-UI-44183, 15-UI-44181, 15-UI-44185, 15-UI-44188, 15-UI-44190, 15-UI-44189, 15-UI-44191, 15-UI-44178, 15-UI-44154, 15-UI-44152, 15-UI-44193, 15-UI-44159, 15-UI-44156, 15-UI-44164, 15-UI-44171, 15-UI-44168, 15-UI-44175, 15-UI-44176, 15-UI-44173, 15-UI-44170, 15-UI-44166, 15-UI-44163, 15-UI-44161, 15-UI-44157, 15-UI-44155, 15-UI-44153, and 15-UI-44151, affirming the Department's decisions. On September 30, 2015, the employer filed timely applications for review of all 31 decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-44194, 15-UI-44162, 15-UI-44192, 15-UI-44179, 15-UI-44183, 15-UI-44181, 15-UI-44185, 15-UI-44188, 15-UI-44190, 15-UI-44189, 15-UI-44191, 15-UI-44178, 15-UI-44154, 15-UI-44152, 15-UI-44193, 15-UI-44159, 15-UI-44156, 15-UI-44164, 15-UI-44171, 15-UI-44168, 15-UI-44175, 15-UI-44176, 15-UI-44173, 15-UI-44170, 15-UI-44166, 15-UI-44163, 15-UI-44161, 15-UI-44157, 15-UI-44155, 15-UI-44153, and 15-UI-44151. For case-tracking purposes, one EAB Decision was issued to correspond with each hearing decision: EAB Decisions 2015-EAB-1170, 2015-EAB-1150, 2015-EAB-1169, 2015-EAB-1161, 2015-EAB-1163, 2015-EAB-1162, 2015-EAB-1164, 2015-EAB-1165, 2015-EAB-1167, 2015-EAB-1166, 2015-EAB-1168, 2015-EAB-1160, 2015-EAB-1144, 2015-EAB-1142, 2015-EAB-1140, 2015-EAB-1148, 2015-EAB-1146, 2015-EAB-1152, 2015-EAB-1156, 2015-EAB-1154, 2015-EAB-1158, 2015-EAB-1159, 2015-EAB-1157, 2015-EAB-1155, 2015-EAB-1153, 2015-EAB-1151, 2015-EAB-1149, 2015-EAB-1147, 2015-EAB-1145, 2015-EAB-1143, and 2015-EAB-1141. On October 20, 2015, EAB issued Appeals Board Decisions 2015-EAB-1170, 2015-EAB-1150, 2015-EAB-1169, 2015-EAB-1161, 2015-EAB-1163, 2015-EAB-1162, 2015-EAB-1164, 2015-EAB-1165, 2015-EAB-1167, 2015-EAB-1166, 2015-EAB-1168, 2015-EAB-1160, 2015-EAB-1144, 2015-EAB-1142, 2015-EAB-1140, 2015-EAB-1148, 2015-EAB-1146, 2015-EAB-1152, 2015-EAB-1156, 2015-EAB-1154, 2015-EAB-1158, 2015-EAB-1159, 2015-EAB-1157, 2015-EAB-1155, 2015-EAB-1153, 2015-EAB-1151, 2015-EAB-1149, 2015-EAB-1147, 2015-EAB-1145, 2015-EAB-1143, and 2015-EAB-1141, each of which reversed and remanded the corresponding hearing decision for additional evidence.

On November 17, 2015, ALJ M. Davis conducted a consolidated hearing, at which claimant failed to appear. On November 19, 2015, the ALJ issued Hearing Decisions 15-UI-47984, 15-UI-47982, 15-UI-47979, 15-UI-47980, 15-UI-47977, 15-UI-47973, 15-UI-47965, 15-UI-47967, 15-UI-47957, 15-UI-47958, 15-UI-47959, 15-UI-47961, 15-UI-47950, 15-UI-47963, 15-UI-47981, 15-UI-47951, 15-UI-47952, 15-UI-47948, 15-UI-47954, 15-UI-47955, 15-UI-47945, 15-UI-47946, 15-UI-47941, 15-UI-47942, 15-UI-47943, 15-UI-47944, 15-UI-47934, 15-UI-47935, 15-UI-47949, 15-UI-47937, and 15-UI-47939, concluding that claimant refused offers of suitable work without good cause, and was, therefore, disqualified from receiving unemployment insurance benefits. On December 4, 2015, claimant filed timely applications for review of all 31 hearing decisions with EAB. Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-47984, 15-UI-47982, 15-UI-47979, 15-UI-47980, 15-UI-47977, 15-UI-47973, 15-UI-47965, 15-UI-47967, 15-UI-47957, 15-UI-47958, 15-UI-47959, 15-UI-47961, 15-UI-47950, 15-UI-47963, 15-UI-47981, 15-UI-47951, 15-UI-47952, 15-UI-47948, 15-UI-47954, 15-UI-47955, 15-UI-47945, 15-UI-47946, 15-UI-47941, 15-UI-47942, 15-UI-47943, 15-UI-47944, 15-UI-47934, 15-UI-47935, 15-UI-47949, 15-UI-47937, and 15-UI-47939. For case-tracking purposes, one EAB Decision is being issued to correspond with each hearing decision, so this decision is being issued as EAB Decisions 2015-EAB-1422, 2015-EAB-1423, 2015-EAB-1424, 2015-EAB-1425, 2015-EAB-1426, 2015-EAB-1427, 2015-EAB-1428, 2015-EAB-1429, 2015-EAB-1430, 2015-EAB-1431, 2015-EAB-1432, 2015-EAB-1433, 2015-EAB-1434, 2015-EAB-1435, 2015-EAB-1436, 2015-EAB-1437, 2015-EAB-1438, 2015-EAB-1439, 2015-EAB-1440, 2015-EAB-1441, 2015-EAB-1442, 2015-EAB-1443, 2015-EAB-1444, 2015-EAB-1445, 2015-EAB-1446, 2015-EAB-1447, 2015-EAB-1448, 2015-EAB-1449, 2015-EAB-1450, 2015-EAB-1451, and 2015-EAB-1452.

In written argument, claimant submitted new evidence and asked EAB to consider it. EAB may only consider new information that was not presented at the hearing under OAR 471-041-0090 (October 29,

2006) if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. Claimant argued, in essence, that it was impossible for her to attend the hearing because her six-year old child required emergency medical treatment and, at the time of the consolidated hearing in this matter, she was at an urgent care facility with her child while the child underwent treatment. Claimant's child's need for emergency medical treatment constitutes a circumstance beyond her control that prevented her from attending the hearing to present evidence about the job refusals at issue, and claimant is entitled to the opportunity to present her evidence. The hearing decisions under review are reversed as unsupported by a complete record, and these matters are remanded to the Office of Administrative Hearings for further proceedings consistent with this consolidated order.¹

DECISION: Hearing Decision 15-UI-47984 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and J. S. Cromwell

DATE of Service: December 9, 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. 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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¹ **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate the hearing decisions under review or return these matters to EAB. Only a timely application for review of the subsequent hearing decisions will cause this matter to return to EAB.