

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1497**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On October 15, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 135659). The employer filed a timely request for hearing. On November 18, 2015, ALJ S. Lee conducted a hearing in which the claimant did not participate, and on November 24, 2015, issued Hearing Decision 15-UI-48268, reversing the administrative decision and concluding that the employer discharged claimant for misconduct. On December 14, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

With his application for review, claimant included a letter in which he asks for another hearing. 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 is "suffering from severe depression and bi-polar disorder," and is requesting another hearing due to "health issues." Claimant's health problems constitute circumstance beyond his reasonable control that may have prevented him from participating in the hearing. We therefore allow claimant's request. Due process of law requires that the employer be given the opportunity to respond to claimant's request to have EAB consider new information, and to the information itself. Hearing Decision 15-UI-48268 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.

**DECISION:** Hearing Decision 15-UI-48268 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and J. S. Cromwell

**DATE of Service:** December 16, 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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