

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0104**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On November 11, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 81031). Claimant filed a timely request for hearing. On January 20, 2016, ALJ Murdock conducted a hearing in which the employer did not participate, and on January 22, 2016, issued Hearing Decision 16-UI-51527, concluding that the employer discharged claimant, but not for misconduct. On January 28, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer included a letter in which it asks that the hearing be reopened. The employer's request is considered a request to have EAB consider new evidence under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information 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 the request, the employer's representative stated that she was unable to participate in the hearing due to a "customer situation." She stated, "I had all intentions to be present at the hearing, but with the customer circumstances, I had a responsibility to deal with that customer situation." The unexpected customer situation was a circumstance 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 16-UI-51527 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 16-UI-51527 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and J. S. Cromwell

**DATE of Service: January 29, 2016**

**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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