

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0173

Reversed & Remanded

PROCEDURAL HISTORY: On January 8, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 130138). Claimant filed a timely request for hearing. On January 25, 2016, ALJ Monroe conducted a hearing in which the employer did not appear, and on February 2, 2016, issued Hearing Decision 16-UI-52140, concluding the employer discharged claimant, but not for misconduct. On February 16, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

On February 18, 2016, the employer submitted a letter in which a person who identifies him or herself as “the employer of Hill Florist and Gifts” states that this person was “out of town when the letter about the claimant’s appeal was mailed to me. By the time I came back into town, the date was already over. I missed the appeal because I wasn’t aware.” The signature on this letter is illegible, so it is impossible to determine the name of the person who wrote it. The employer’s request is treated as a request to have EAB consider additional evidence under OAR 471-041-0090 (October 29, 2006), which allows 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.

While the statements in the employer’s February 18 letter suggest that circumstances beyond the employer’s reasonable control may have prevented it from participating in the hearing, additional evidence is necessary to determine whether this was the case. This matter will therefore be remanded to the ALJ for further evidence regarding the employer’s failure to attend the January 26 hearing. The ALJ should ask who was the “employer” that wrote the February 18 letter, when this person went “out of town,” and when this person returned. In addition, the ALJ should ask what arrangements, if any, the “employer” made for opening and processing mail received during the “employer’s” absence, and any other arrangements made for handling important business matters that may have arisen during the “employer’s” trip. If the ALJ determines that the employer demonstrates that circumstances beyond its reasonable control prevented it from participating in the hearing, the ALJ should then conduct a hearing on the merits of claimant’s work separation.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-52140 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 16-UI-52140 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and D. H. Hettle;
J. S. Cromwell, not participating.

DATE of Service: February 24, 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. 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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