

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0277

Reversed & Remanded

PROCEDURAL HISTORY: On November 25, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 73119). Claimant filed a timely request for hearing. On March 9, 2016, ALJ Turner conducted a hearing in which the employer did not participate, and issued Hearing Decision 16-UI-54652, affirming the administrative decision. On March 11, 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 apologized for missing the hearing and requested “to have the decision reviewed.” 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 new information if the party presenting the information demonstrates that circumstances beyond its reasonable control prevented the employer from offering the information at the hearing.

In support of its request, the employer explained that it missed the hearing because “[t]he supervisor who was to call [for the hearing] didn’t have the directions on how to join the phone hearing and the person who could have helped him out was sick.” Additional information is necessary to determine if the situation described by the employer resulted from circumstances beyond its reasonable control. We therefore reverse this case and remand it to the ALJ for further inquiry into the reasons why the employer missed the March 9, 2016 hearing.

On remand, the ALJ must ask when the employer received the hearing notice, and when and what arrangements were made for the supervisor to participate in the hearing. The ALJ must also ask when the supervisor learned that he did not have the directions for the hearing, whether he attempted to find the directions or contact the individual who was sick to ask about the directions, and if he did not make these attempts, why he was unable to do so. In addition, the ALJ must ask whether the employer contacted the Office of Administrative Hearings to request assistance in accessing the hearing and if the employer did not make this contact, why it was unable to do so. Finally, the ALJ must ask any other questions necessary to obtain complete information about the reasons why the employer did not participate in the hearing. If the ALJ determines that the evidence demonstrates good cause for the

employer's failure to participate in the hearing, the employer must then conduct a new hearing on the merits of claimant's work separation, and issue a new decision.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-54652 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-54652 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 18, 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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