

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0499

Reversed & Remanded

PROCEDURAL HISTORY: On March 15, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 101444). The administrative decision was sent to the employer's address of record, which was: 2750 NE Doran Dr., McMinnville OR 97127. On March 29, 2016, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for April 12, 2016; the notice of hearing was sent to the employer at the following address: 2750 NE Doran Dr., Lafayette OR 97127. On April 12, 2016, ALJ Monroe conducted a hearing at which the employer did not appear. On April 14, 2016, the notice of hearing mailed to the employer was returned to OAH by the U. S. Postal Service as undeliverable. On April 20, 2016, ALJ Monroe issued Hearing Decision 16-UI-57751, concluding that the employer discharged claimant, but not for misconduct. OAH sent Hearing Decision 16-UI-57751 to the employer's address of record in McMinnville. On April 29, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

On May 2, 2016, the employer submitted a letter requesting that the hearing be reopened because it did not receive notice of the April 12 hearing. The employer'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 demonstrates it was prevented by circumstances beyond its reasonable control prevented the party from presenting the information at the hearing. Here, the employer never received notice of the hearing because OAH sent the hearing to an incorrect address and not to the employer's address of record. The clerical error made by OAH staff was a circumstance beyond the employer's reasonable control that prevented it from participating in the hearing. The employer's request is therefore allowed. Due process of law requires that claimant be given the opportunity to respond to the employer's new information. Hearing Decision 16-UI-57751 is

therefore reversed, and this matter remanded pursuant to ORS 657.275(1) for a new hearing and hearing decision based on the record of the proceeding before the ALJ.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-57751 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-57751 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: May 5, 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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