

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0524**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On February 26, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 85539). The employer filed a timely request for hearing. On March 25, 2016, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for April 11, 2016 to the parties at their addresses of record with the Department. On April 11, 2016, ALJ Vincent conducted a hearing at which claimant failed to appear, and on April 15, 2016 issued Hearing Decision 16-UI-57420, concluding the employer discharged claimant for misconduct. On April 4, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Hearing Decision 16-UI-57420 is reversed, and this matter remanded to OAH for another hearing on whether claimant is disqualified from receiving benefits based on her work separation from the employer.

In written argument, claimant requested that the April 11, 2016 hearing be reopened. Claimant's request is construed as a request for EAB to consider new information relevant and material to EAB's determination of whether claimant is disqualified from receiving benefits based on her work separation from the employer. OAR 471-041-0090(2) (October 29, 2006), allows EAB to consider such information when the party offering the information establishes that factors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing.

In support of her request, claimant stated she failed to appear at the April 11, 2016 hearing because, on March 25, 2016, a Department representative told her the hearing had been scheduled for April 12, 2016 and that she would receive a letter in the mail with more information about the hearing, but claimant never received the March 25, 2016 notice of hearing, and therefore did not know that she was supposed to call in to the hearing, or that it was scheduled for April 11, and not April 12, as she had been told. Claimant further stated that she did not think to call the Department again to determine why she did not receive a letter about the hearing because she recently had suffered a concussion, which triggered a case of depression and anxiety. The Department's misinformation regarding the date of the hearing, claimant's failure to receive the notice of hearing, and her depression and anxiety were factors and

circumstances beyond her reasonable control that prevented her from appearing at the April 11, 2016 hearing and offer her information in to evidence at that time. Claimant's request for EAB to consider new information therefore is allowed. Due process of law requires that the employer be allowed an opportunity to respond. Hearing Decision 16-UI-57420 therefore is reversed, and this matter remanded to OAH for another hearing on whether claimant is disqualified from receiving benefits based on her work separation from the employer.

**DECISION:** Hearing Decision 16-UI-57420 is set aside, and this matter remanded for further proceedings consistent with this order.<sup>1</sup>

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

**DATE of Service:** May 10, 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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<sup>1</sup> **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-57420 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.