

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0664

Reversed & Remanded

PROCEDURAL HISTORY: On April 18, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 92108). Claimant filed a timely request for hearing. On May 12, 2016, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for May 25, 2016. On May 25, 2016, ALJ M. Davis conducted a hearing in which the employer failed to appear, and issued Hearing Decision 16-UI-60440, concluding that the employer discharged claimant, but not for misconduct. On June 1, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

On the form used to file its application for review, an employer representative provided the following explanation for the representative's failure to appear at the May 25 hearing:

I called in, and listened to loud music. It kept saying my hearing had not started. Eventually, I called 1-800-622-4041 and they said there was no hearing? Or I called too early? but I would need to respond to the final order.

The employer's statement is construed as a request to have EAB consider new information regarding claimant's work separation under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party offering the information shows that circumstances beyond its reasonable control prevented the party from presenting the information at the hearing. The statement in the employer's application for review indicates that some type of technical difficulty or malfunction in the OAH telephone system may have prevented its representative from participating in the May 25 hearing. We will therefore reverse Hearing Decision 2016-EAB-0664 and remand it to the OAH for further evidence regarding the reason why the employer did not participate in the hearing. On remand, the ALJ should ask what number the employer's representative first called on the day of the hearing, when the employer's representative called this number, how long the representative waited while

listening to “loud music,” when the representative called the alternate number, with whom did he speak, and what the representative was told when he called the alternate number. The ALJ should ask any other questions necessary to determine if the employer’s failure to participate in the May 25 hearing resulted from circumstances beyond its reasonable control. If the ALJ determines that the employer demonstrates good cause for failing to appear at the hearing, the ALJ should then proceed to a hearing on the merits of claimant’s hearing request.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-60440 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-60440 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: June 9, 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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