

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0698

Reversed & Remanded

PROCEDURAL HISTORY: On April 19, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 81454). Claimant filed a timely request for hearing. On May 10, 2016, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for May 23, 2016. On May 23, 2016, ALJ Murdock conducted a hearing at which the employer failed to appear, and on May 24, 2016 issued Hearing Decision 16-UI-60255, concluding the employer discharged claimant, but not for misconduct. On June 13, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 16-UI-60255 is reversed, and this matter remanded to OAH for further another hearing on whether claimant is disqualified from receiving benefits based on a work separation from the employer.

In written argument, the employer asked EAB to reopen this case, asserting that its representative was unable to appear at the May 23, 2016 hearing. The employer's request is construed as a request for EAB to consider new, relevant and material information under OAR 471-041-0090 (October 29, 2006), which allows EAB 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 its request, the employer stated that its representative was unable to appear at the hearing because on May 23 he was attending to his dying mother, who had just awakened after being admitted to a hospital emergency room on May 9, suffering a stroke on May 19, and falling into a coma on May 21. The representative's mother's medical condition was a circumstance beyond the employer's control that prevented it from appearing at the May 23 hearing and offering information into evidence at that time. The employer's request for EAB to consider new information therefore is granted. Due process of law requires that the employer be allowed an opportunity to respond. Hearing Decision 16-UI-60255 therefore is reversed, and this matter remanded to OAH for another hearing on whether claimant is disqualified from receiving benefits based on a work separation from the employer.

DECISION: Hearing Decision 16-UI-60255 is set aside, and this matter remanded for further proceedings consistent with this order.¹

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

DATE of Service: June 21, 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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¹ The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-60255 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.