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State of Oregon  
**Employment Appeals Board**  
875 Union St. N.E.  
Salem, OR 97311

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<p><b>EMPLOYMENT APPEALS BOARD DECISION</b> <b>2016-EAB-0902</b></p>
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*Reversed*  
*Request to Reopen Granted*

**PROCEDURAL HISTORY:** On April 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 75155). The decision was sent to the employer at the following address: Margaret McVay/Developmental Disab c/o TNT Intermediary Svcs Inc, 4935 Indian School Rd NE, Salem, OR 97305. Claimant filed a timely request for hearing. On May 25, 2016, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for June 7, 2016 to the employer at the Indian School Rd NE address. On June 7, 2016, ALJ Vincent conducted a hearing at which the employer failed to appear, and on June 15, 2016, issued Hearing Decision 16-UI-61824, concluding that the employer discharged claimant, not for misconduct. The hearing decision was sent to the employer at the Indian School Rd NE address, and also sent to the following address: Margaret McVay, 1581 SE Evans Ave, Troutdale OR 97060. On June 20, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

On June 24, 2016, EAB issued Appeals Board Decision 2016-EAB-0742, which reversed Hearing Decision 16-UI-61824 and remanded the matter to the ALJ for further development of the record. On July 18, 2016, ALJ Vincent conducted a hearing, and on July 21, 2016, issued Hearing Decision 16-UI-64251 in which he denied the employer's request to reopen and concluded that claimant was discharged, but not for misconduct. On August 3, 2016, the employer filed an application for review of Hearing Decision 16-UI-61824.

With its application for review, the employer presented information regarding claimant's work separation. Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information if the party presenting the information demonstrates that circumstances beyond the party's reasonable control

prevented the party from offering the information at the hearing. Because we have granted the employer's request to reopen, and have remanded this matter for new hearing and a new decision on the merits of claimant's work separation, the employer will have an opportunity to present information regarding claimant's work separation at the new hearing. It is therefore unnecessary for us to decide whether to consider this new information under OAR 471-041-0090.

**FINDINGS OF FACT:** (1) Margaret McVay (the employer) employed claimant as a caregiver for L<sup>1</sup>, her severely disabled son, from September 23, 2014 until January 8, 2016, acting on his behalf to hire, train, and schedule caregivers. L and the employer live together at the following address: 1581 SE Evans Ave., Troutdale OR 97060.

(2) The employer is provided a certain amount of public funds for the care of her son. A service coordinator from Multnomah County Developmental Disabilities Services assists the employer in hiring, training and scheduling caregivers within the limits of available funds. The employer submits time sheets for the caregivers she employs to the service coordinator, who sends them to TNT Fiscal Intermediary Services (TNT).<sup>2</sup> TNT then issues paychecks to the caregivers. The employer had no direct relationship with TNT, and never personally authorized TNT to act as its agent in unemployment matters.

(3) Because the administrative decision and notice of hearing was sent to TNT, the employer never received them. She first became aware of the hearing on June 8, 2016, when she received a copy of the hearing notice that was sent to her by TNT. The employer immediately contacted the Office of Administrative Hearings (OAH) and gave it her address. OAH then sent a copy of Hearing Decision 16-UI-61824 to the employer at the Troutdale address.

**CONCLUSION AND REASONS:** We disagree with the ALJ and conclude that the employer demonstrated good cause for reopening.

Under OAR 471-040-00400(1) (February 10, 2013), an ALJ may reopen a hearing if the party requesting reopening failed to appear at the hearing and demonstrates good cause for failing to appear. Good cause for reopening exists if the party's failure to act arises from an excusable mistake or factor beyond the party's reasonable control. OAR 471-040-0040(1)(a).

In Hearing Decision 16-UI-64251, the ALJ found that "the employer provided the Department with a third-party forwarding address as its mailing address," and the hearing notice "was mailed to the employer properly addressed as requested by the employer." The ALJ then concluded that the employer failed to show good cause for reopening because "[n]othing in the record support the conclusion that any excusable mistake or circumstance beyond the employer's reasonable control caused the mail to be processed in an untimely fashion." Hearing Decision 16-UI-64251 at 3. We disagree.

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<sup>1</sup> "L" is pseudonym.

<sup>2</sup> TNT assists individuals with developmental disabilities in their role as employer by processing payroll and vendor payments. Under OAR 471-041-0090(3), we take official notice of these facts which are found at the TNT website, [www.tntfi.com/home.html](http://www.tntfi.com/home.html). Any party that objects to our noticing these facts must submit its objection to this office in writing, setting forth the basis of this objection, within 10 days of the date on which this decision is mailed. Unless such an objection is received, the noticed facts will remain part of the record.

The record is clear that Margaret McVay is the employer and party to the hearing on claimant's work separation. OAR 471-040-0015(1) (August 1, 2004) requires that notice of a hearing be mailed at least five days in advance of the hearing "to parties or their authorized agents at their last known address as shown by the record of the Director." The record shows that the employer never authorized TNT to serve as its agent in regard to unemployment matters. The employer's failure to receive notice of the hearing occurred because the Department incorrectly determined that TNT was the employer's authorized agent. As a result, neither the administrative decision nor the notice of hearing was mailed to the employer at the correct, Troutdale address. Because the employer's failure to appear at the hearing resulted from circumstances beyond its control, the employer demonstrated good cause to reopen the hearing on claimant's work separation.

Hearing Decision 16-UI-64251 is reversed. In accordance with ORS 657.275(1), this matter is remanded to OAH for a new hearing and a new decision on the merits of claimant's work separation.

**DECISION:** Hearing Decision 16-UI-64251 is set aside, as outlined above.

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

**DATE of Service:** August 12, 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 print 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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