

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0909

Reversed & Remanded

PROCEDURAL HISTORY: On December 3, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 114844). On December 22, 2015, the employer filed a timely request for hearing. The employer heard nothing further about its hearing request and on June 23, 2016, asked the Office of Administrative Hearings about the status its hearing request. On July 18, 2016, ALJ Shoemake conducted a hearing, at which claimant did not appear, and on July 22, 2016, issued Hearing Decision 16-UI-64327, concluding that the employer filed a timely hearing request and that the employer discharged claimant for misconduct. On August 3, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review, claimant included a letter in which her representative explained that claimant did not receive notice of the hearing until after it had occurred. Claimant's letter is considered a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. In support of claimant's request, her representative asserted that on the date the hearing was scheduled, claimant "had just got home from the hospital" where she had been treated for severe injuries sustained in a car accident, that claimant was disabled and "wheelchair bound," and on medication for pain. According to her representative, claimant "was definitely not in any shape to speak to anyone" on the day of the hearing. Given the circumstances described in claimant's letter, it appears more likely than not that claimant's injuries or hospital stay prevented her from timely receiving the hearing notice and participating in the hearing. Because claimant demonstrated that circumstances beyond her reasonable control prevented her from participating in the hearing, her request to present new evidence is allowed. Hearing Decision 16-UI-64327 is therefore reversed, and this matter remanded pursuant to ORS 657.275(1) for a new hearing and hearing decision based upon 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-64327 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-64327 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: August 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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