

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0982

Reversed & Remanded

PROCEDURAL HISTORY: On July 13, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 105231). The employer filed a timely request for hearing. On August 15, 2016, ALJ Murdock conducted a hearing, and on August 17, 2016, issued Hearing Decision 16-UI-65858, concluding that the employer discharged claimant for misconduct. On August 26, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review, claimant requested another hearing, explaining that she missed the August 15 hearing “due to not receiving my letter in time to attend.” Claimant’s request is construed as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2016), which allows EAB to consider new information if the party offering the information demonstrates that circumstances beyond the party’s reasonable control prevented the party from offering the information at the hearing. In support of her request, claimant asserted that “[m]y letter from the unemployment office got put in another mail box that was not mine [sic] it was of my neighbor.” Because misdirected mail is a circumstance beyond claimant’s reasonable control, claimant’s request to present new information is granted. Because due process of law requires that the employment have an opportunity to respond to claimant’s new information, Hearing Decision 16-UI-65858 is 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-65858 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-65858 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 30, 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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