

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1179

Reversed & Remanded

PROCEDURAL HISTORY: On August 5, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 90859). Claimant filed a timely request for hearing. On September 12, 2016, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for September 26, 2016 to the parties at their addresses of record with the Department. On September 26, 2016, ALJ Shoemake conducted a hearing at which the employer failed to appear, and on September 30, 2016 issued Hearing Decision 16-UI-68404, concluding the employer discharged claimant, but not for misconduct. On October 18, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 16-UI-68404 is reversed, and this matter remanded to OAH for another hearing on whether claimant is disqualified from receiving benefits based on his work separation from the employer.

In support of its application for review, the employer submitted written argument stating that it failed to appear at the September 26, 2016 hearing because it never received notice of the hearing in the mail, and offering new information into the record. The employer's argument is construed as a request for consideration of new information under OAR 471-041-0090(2) (October 29, 2016), which states that new information may be considered 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 it inspected claimant's employment file and all the email it received during the relevant time period, but has no record of receiving any notice of the September 26, 2016 hearing. Although documents sent through the U.S. Postal service are presumed to have been received by the addressee subject to evidence to the contrary,¹

¹ OAR 137-003-0520(9).

the employer's confirmation that it did not receive notice of the hearing is sufficient to rebut that presumption.

The employer's failure to receive notice of the September 26, 2016 hearing in the mail was a circumstance beyond its reasonable control that prevented the employer from appearing at the hearing and offering its information into evidence at that time. The employer's request for consideration of new information under OAR 471-041-0090(2) therefore is granted. Hearing Decision 16-UI-68404 is reversed, and this matter remanded to OAH for another hearing on whether claimant is disqualified from receiving benefits based on his work separation from the employer.

DECISION: Hearing Decision 16-UI-68404 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: October 25, 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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