

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1322

Reversed & Remanded

PROCEDURAL HISTORY: On September 29, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 150825). The employer filed a timely request for hearing. On November 15, 2016, ALJ Murdock conducted a hearing, at which claimant failed to appear, and on November 16, 2016 issued Hearing Decision 16-UI-71236, concluding claimant voluntarily left work without good cause. On November 22, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 16-UI-71236 is reversed, and this matter remanded to the Office of Administrative Hearings (OAH) for further proceedings.

With its application for review, claimant submitted written argument in which he requested another hearing on whether he should be disqualified from receiving benefits based on his work separation from the employer, asserting that he was unable to attend the November 15th hearing. Claimant's request is construed as a request for EAB to consider new information under OAR 471-041-0090(2) (October 29, 2016), which states that new information may be considered when the party offering it shows that factors or circumstances beyond his reasonable control prevented him from offering the information into evidence at the hearing.

In support of his request, claimant stated that he was unable to attend the hearing as scheduled "because my son needed medical attention" and the "situation did not allow me to change the date and time of the hearing." Although claimant's brief description of the circumstances that caused him to miss the hearing suggests the possibility that attending the hearing was beyond his reasonable control, he did not describe those circumstances in sufficient detail to resolve that question without additional evidence. Because the record is incomplete, we therefore reverse Hearing Decision 16-UI-71236 and remand this matter for additional evidence.

On remand, the ALJ should ask claimant to explain when he received notice of the November 15th hearing, when he discovered that he would not be able to attend, what the specific circumstances caused

him to miss the hearing, what if any attempt he made to notify OAH that he could not attend the hearing as scheduled and request that it be rescheduled or postponed, and, if he did not make any such effort, why he chose not to do so. If, and only if, claimant establishes to the ALJ's satisfaction that factors or circumstances beyond his reasonable control prevented him from attending the November 15th hearing, the ALJ should then conduct another hearing on whether claimant is disqualified from receiving benefits because of his work separation from the employer.

DECISION: Hearing Decision 16-UI-71236 is set aside, and this matter remanded for further proceedings consistent with this order.¹

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

DATE of Service: November 29, 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 **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-71236 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.