

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0025

Reversed & Remanded

PROCEDURAL HISTORY: On November 30, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 75321). Claimant filed a timely request for hearing. On December 14, 2016, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for December 28, 2016. On December 16, 2016, the employer requested that the hearing be postponed until January 3, 2017 or thereafter. On December 28, 2016, ALJ Wyatt conducted a hearing, at which the employer failed to appear, and on December 30, 2016 issued Hearing Decision 16-UI-73873, concluding claimant voluntarily left work with good cause. On January 6, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 16-UI-73873 should be reversed and this matter remanded.

With its application for review, the employer requested another hearing on whether claimant is disqualified from receiving benefits based on his work separation from the employer because its business was closed and it could not attend the first hearing, which was held despite the employer's request that it be rescheduled. The employer's request is construed as a request for EAB to review OAH's denial of the employer's request to have the December 28, 2016 hearing postponed.

The employer requested postponement on December 16, 2016, stating in writing that the employer's offices were closed from December 19, 2016 through January 2, 2017, reopening on January 3, 2017, and, because of the closure, the employer "is not able to be represented at this hearing and request[s] a new date and time so that we can attend." The written postponement request also stated, "A phone call was made today to [OAH] and was told that we could not reschedule but that we could send any documentation or we could then appeal the decision." The employer enclosed some documents with its written postponement request.¹

¹ The ALJ subsequently excluded the documents from evidence on the grounds that the employer did not provide claimant with a copy of them. Hearing Decision 16-UI-73873 at 1 fn. 1. Although the notice of hearing advised parties to provide copies of any documentation they wished to have considered to the other parties prior to the hearing, it is notable that

OAR 471-040-0021(2) (August 1, 2004) states that a postponement may be granted by OAH at the request of a party if the request is promptly made after the party becomes aware of the need for postponement, and the party has good cause, as stated in the request, for not attending the hearing at the time and date set. “Good cause” exists when the circumstances causing the request are beyond the reasonable control of the requesting party, and failure to grant the postponement would result in undue hardship to the requesting party. OAR 471-040-0021(3).

The record shows that the employer made its postponement request on December 16, 2016, only two days after notice of the hearing was mailed, suggesting that the employer requested postponement promptly upon becoming aware of the need for a postponement. The fact that the employer’s business was closed, and no one available to participate in a hearing on the date it was scheduled, suggests that the circumstances causing the employer’s request for a postponement were beyond its reasonable control, and that OAH’s failure to grant the postponement resulted in undue hardship to the employer.

The hearing record contains no information regarding OAH’s treatment of the employer’s request for a postponement beyond the employer’s bare statement that the employer “was told that we could not reschedule.” The record contains no explanation of the basis upon which OAH apparently denied the employer’s request, nor does Hearing Decision 16-UI-73873 address the issue. The hearing record therefore lacks sufficient information to determine whether OAH erred in denying the employer’s request – made promptly and for what appears to have been good cause – for a postponement.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Absent sufficient information in the hearing record to determine whether OAH erred in denying the employer’s request for a postponement, Hearing Decision 16-UI-73873 is reversed, and this matter remanded for a hearing on that issue and, if necessary, another hearing on whether claimant is disqualified from receiving benefits based on his work separation from the employer.

DECISION: Hearing Decision 16-UI-73873 is set aside, and this matter remanded for further proceedings consistent with this order.²

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

DATE of Service: January 23, 2017

whomever informed the employer that it had the option to provide that documentation for the hearing did not inform the employer of that requirement. *See* Employer’s argument.

² **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-73873 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.

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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