

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0027**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On October 20, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 114946). Claimant filed a timely request for hearing. On December 8, 2016, the Office of Administrative Hearings (OAH) mailed the parties notice of a hearing scheduled for December 12, 2016 at 10:45 a.m. On December 12, 2016, ALJ Triana conducted a hearing, at which the employer failed to appear, and on December 13, 2016 issued Hearing Decision 16-UI-72792, concluding claimant's discharge was not for misconduct. On January 3, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** OAH failed to provide the employer with notice of the December 12<sup>th</sup> hearing as required by OAR 471-040-0015(1).

With the employer's application for review, the employer requested a new hearing, arguing that it did not participate in the December 12<sup>th</sup> hearing because it did not receive notice of the hearing until after the hearing was over. The employer's request for relief is construed as a request to have EAB consider additional evidence 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. Here, OAH mailed notice of the hearing to the parties on December 8<sup>th</sup>, four days prior to the scheduled hearing date. However, OAR 471-040-0015(1) requires that OAH "shall" mail parties notice of hearing "at least five days in advance of the hearing."<sup>1</sup> We conclude that OAH's failure to provide the amount of notice required by its administrative rules was a circumstance beyond the employer's reasonable control that prevented it from appearing at the hearing. The employer's request to present additional evidence is, therefore, allowed, and the case remanded to OAH for a new hearing on the merits of decision # 114946.

<sup>1</sup> Cf. ORS 657.270(2)(b), which requires that the Department "shall" provide parties with notice of all jurisdictional documents, presumably including notice of the hearing and other materials establishing OAH's authority to schedule and hold a hearing, "at least seven days prior to the hearing."

**DECISION:** Hearing Decision 16-UI-72792 is set aside, and this matter remanded for further proceedings consistent with this order.<sup>2</sup>

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

**DATE of Service: January 11, 2017**

**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](http://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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<sup>2</sup> **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-72792 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.