

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0070

Reversed & Remanded

PROCEDURAL HISTORY: On December 7, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 63213). The employer filed a timely request for hearing. On January 11, 2017, ALJ Holmes-Swanson conducted a hearing, at which claimant failed to appear, and on January 12, 2017 issued Hearing Decision 17-UI-74648, concluding claimant voluntarily left work without good cause. On January 19, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 17-UI-74648 should be reversed and this matter remanded.

With her application for review, claimant submitted a written argument in which she asked that her case be “reopened” so she could “have the opportunity to defend” herself regarding her work separation. Claimant’s request is construed as a request for EAB to consider new information under OAR 471-041-0090 (October 29, 2006). OAR 471-041-0090(2)(b) 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. In support of her request, claimant explained that she was prepared to participate in the January 11th hearing at the designated time, but when she tried to call the phone number she had been provided for the hearing conference call she “was not able to get though [sic] due to my phone ringing a busy sound . . . for any number outside of 503 area code,” and when she tried to contact the carrier to resolve the problem she was unable to get a response due to the inclement weather. Claimant’s unexpected loss of phone service at the time she was trying to call into the hearing was, more likely than not, a circumstance beyond her reasonable control that prevented her from appearing at the hearing to provide information about her work separation. Her request to submit new information is, therefore, allowed, and this matter is remanded to the Office of Administrative Hearings for a new hearing on claimant’s work separation, and a new hearing decision.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-74648 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 17-UI-74648 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: January 30, 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. 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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