

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0132

Reversed & Remanded

PROCEDURAL HISTORY: On October 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 122655). Claimant filed a timely request for hearing. On November 16, 2016, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for November 30, 2016, at which claimant failed to appear. On December 1, 2016, ALJ Wyatt issued Hearing Decision 16-UI-72037, dismissing claimant's hearing request for failure to appear. On December 13, 2016, claimant filed a timely request to reopen the hearing. On January 11, 2017, OAH mailed notice of a hearing scheduled for January 24, 2017. On January 24, 2017, ALJ Wyatt conducted a hearing, at which the employer failed to appear, and on January 27, 2017 issued Hearing Decision 17-UI-75627, allowing claimant's request to reopen and concluding that claimant voluntarily left work with good cause and was not disqualified from benefits. On February 1, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 17-UI-75627 is set aside, and this matter remanded.

With the employer's application for review, the employer requested to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing 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 the request, the employer's owner asserted that she missed the hearing because "I was sick at home with an upper respiratory viral infection and asthma complications." In further support, the owner provided medical documentation establishing that she was, indeed, sick on January 24th and, according to her physician's prognosis, her symptoms were unlikely to improve until January 25th at the earliest. We conclude that participating in the hearing or taking steps to request a postponement were, more likely than not, beyond the owner's reasonable control given her illness and the nature of her symptoms, and, therefore, that the hearing record is incomplete without the owner's evidence concerning claimant's work separation. Hearing Decision 17-UI-75627 is set aside as unsupported by a complete record, and this matter remanded for development of a complete hearing record.

DECISION: Hearing Decision 17-UI-75627 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: February 21, 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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¹ **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-75627 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.