

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0282

Reversed & Remanded

PROCEDURAL HISTORY: On January 17, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 11042). Claimant filed a timely request for hearing. On February 16, 2017, ALJ Frank conducted a hearing at which the employer failed to appear, and on February 22, 2017, issued Hearing Decision 17-UI-77467, concluding that the employer discharged claimant, but not for misconduct. On March 6, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

In its written argument, the employer representative asked for a new hearing, explaining that although its representative planned to participate in the hearing on February 16, he was unable to do so “because my log truck was broken down in the woods and I was in a location without telephone service.” The employer’s request is considered a request to have EAB consider new evidence under OAR 471-041-0090(2) (October 29, 2006), which allows EAB to consider new information if the party offering the information shows that circumstances beyond the party’s reasonable control prevented the party from participating in the hearing. The breakdown of the employer’s representative’s truck in a remote area and resulting loss of phone service were circumstances beyond the representative’s control that prevented the employer from presenting evidence at the hearing. The employer’s request is therefore allowed. Hearing Decision 17-UI-77467 is reversed, and this matter remanded pursuant to ORS 657.275(2) for a new hearing and hearing decision based upon the record of the proceeding before the ALJ.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-77467. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

DECISION: Hearing Decision 17-UI-77467 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 9, 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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