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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0337

Reversed & Remanded

PROCEDURAL HISTORY: On February 7, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 84753). Claimant filed a timely request for hearing. On March 10, 2017, ALJ Shoemake conducted a hearing, at which the employer failed to appear, and on March 14, 2017 issued Hearing Decision 17-UI-78842, concluding claimant's discharge was not for misconduct. On March 20, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

In its written argument, the employer asked for a new hearing. We construe the employer's request as a request for EAB to consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing of the party offering the information shows that circumstances beyond its reasonable control prevented it from presenting the information at the hearing. In support of its request, the employer argued that although the district manager planned to attend the hearing and made arrangements to do so, unforeseeable circumstances prevented her from participating despite her best efforts. The employer has established that it is entitled to present its new information about claimant's work separation. Hearing Decision 17-UI-78842 must therefore be reversed as unsupported by a complete record, and this matter remanded to the Office of Administrative Hearings for a new hearing.

DECISION: Hearing Decision 17-UI-78842 is set aside, and this matter remanded for further proceedings consistent with this order.¹

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

DATE of Service: March 23, 2017

¹ **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-78842 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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