

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0368

Reversed & Remanded

PROCEDURAL HISTORY: On January 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 143109). Claimant filed a timely request for hearing. On February 23, 2017, ALJ Shoemake conducted a hearing, and on March 6, 2017, issued Hearing Decision 17-UI-78305, concluding that the employer discharged claimant, but not for misconduct. On March 27, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

In his application for review, the employer's representative explained that he missed the hearing due to problems with his vehicle; because his truck did not start, he arrived at the office 45 minutes after the hearing was scheduled to begin. The employer's request is construed as a request to have EAB to consider new information under OAR 471-041-0090(2) (October 29, 2006, which allows EAB to consider information not offered into evidence at the hearing if the party presenting the information shows that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. Because the representative's problems with his vehicle were circumstances beyond his reasonable control, his request to present to information is allowed. Due process requires that claimant have an opportunity to respond to this new information. Hearing Decision 17-UI-78305 is therefore reversed, and this matter remanded pursuant to ORS 657.275(1) for a new hearing and hearing decision based upon the record of the proceeding before the ALJ.

DECISION: Hearing Decision 17-UI-78305 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 29, 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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