

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

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0379**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On October 21, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 95245). Claimant filed a timely request for hearing. On January 6, 2017, ALJ Triana conducted a hearing, and issued Hearing Decision 17-UI-74208, dismissing claimant's hearing request for failure to appear at the hearing. Claimant filed a timely request to reopen. On March 9, 2017, ALJ Triana conducted a hearing at which the employer failed to appear, and on March 10, 2017 issued Hearing Decision 17-UI-78687, allowing claimant's request to reopen and concluding the employer discharged claimant, not for misconduct. On March 29, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer's representative stated that she was unable to participate in the hearing because she "had a last minute situation and had to leave town [...] I had no phone service. I did call the specified # the day before but was informed that it was not enough notice." The employer's statement is construed as a request to have EAB consider new information regarding claimant's work separation under OAR 471-041-0090(2) (October 29, 2006), which allows EAB to consider new information not offered into evidence at the hearing if the party presenting the information shows that circumstances beyond the party's reasonable control prevented the party from offering the information at the hearing.

The record in this matter contains a March 8, 2017 "Memo to File" which has been marked as EAB Exhibit 1. A copy of EAB Exhibit 1 is included with this decision. Any party that objects to the admission of EAB Exhibit 1 must submit its objections to this office in writing, setting forth the basis of the objection, within ten days of the date on which this decision is mailed. Unless such an objection is received and sustained, EAB Exhibit 1 will remain part of the record. The March 8 memo was prepared by an employee of the Office of Administrative Hearings (OAH) employee who states that on that date, an employer representative contacted OAH

requesting [postponement] due to finding out last night she will be out of town and nobody else in the office knows of this situation. Request for [postponement] denied due

to being untimely, explained that she will need to call into the hearing and request her [postponement] with the ALJ. EAB Exhibit 1.

OAR 471-040-0021(2)(b) (August 1, 2004) provides that OAH may grant postponement of a hearing if the “request is promptly made after the party becomes aware of the need for postponement...” The employer’s request for postponement was prompt; when the representative learned during the evening that she would be out of town on the date the hearing was scheduled, she called OAH the following day to ask for a postponement. The employer’s representative satisfied the requirement of OAR 471-040-0021(2)(b), and OAH abused its discretion by denying the postponement request as “untimely.” Because OAH’s erroneous denial of the employer’s postponement request was a circumstance beyond the employer’s reasonable control, the employer’s request to present new information is granted. Because due process requires that claimant have an opportunity to respond to the employer’s new information, Hearing Decision 17-UI-74208 is reversed, and this matter remanded pursuant to ORS 657.275(1) for new hearing and hearing decision based upon the record of the proceeding before the ALJ.

**DECISION:** Hearing Decision 17-UI-78687 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 31, 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](http://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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