

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0674

Reversed & Remanded

PROCEDURAL HISTORY: On April 5, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 95305). The employer filed a timely request for hearing. On May 12, 2017, ALJ Snyder conducted a hearing at which the employer did not appear and issued Hearing Decision 17-UI-83658, reversing the Department's decision. On June 5, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 17-UI-83658 is reversed and this matter is remanded for further development of the record.

A statement from the employer's representative accompanied the employer's application for review in which the representative stated she was unable to participate in the hearing because "the reminder system I set up my phone [to alert her that she needed to call in for the hearing] failed! I was deeply frustrated when I realized after the call *** that the reminder had failed and I had missed the call. The summary of facts in this situation [in the hearing decision] is quite inaccurate, and I definitely wanted to be at the hearing to present what happened." The employer's statement is construed as a request to have EAB consider new information about 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 seeking to present that evidence shows that factors or circumstances beyond the party's reasonable control prevented the party from offering that information at the hearing.

The failure of the employer's representative's phone reminder about the hearing was a circumstance beyond the employer's reasonable control which prevented the employer from appearing and presenting information at the hearing. Accordingly, the employer's request to present new information is allowed. Because due process requires that the employer be allowed to present information about claimant's work separation and also that claimant have an opportunity to respond to that new information, Hearing Decision 17-UI-83658 is reversed, and this matter is remanded pursuant to ORS 657.275(1) for a new hearing and hearing decision based upon a complete record of the proceedings before the ALJ.

DECISION: Hearing Decision 17-UI-83656 is set aside, and this matter remanded for further proceedings consistent with this order.¹

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

DATE of Service: June 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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¹ The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-83656 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.