

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0772**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On May 22, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 123251). The employer filed a timely request for hearing. On June 19, 2017, ALJ Sgroi conducted a hearing at which claimant initially appeared, but claimant did not cross-examine the employer's witness or testify due to her phone becoming disconnected immediately after the conclusion of the employer's case. On June 21, 2017, the ALJ issued Hearing Decision 17-UI-86289, reversing the Department's decision. On June 26, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Hearing Decision 17-UI-86289 is reversed and this matter is remanded for further development of the record.

Claimant submitted a letter to EAB in which she explained that she was not able to participate fully in the June 19, 2017 hearing because her call was "dropped" immediately after the direct testimony of the employer's witness had concluded. Claimant's letter set out a summary of the testimony she would have presented about her work separation if she had testified, and requested an opportunity to present that letter in lieu of live testimony. OAR 471-041-0090(2) (October 29, 2006) allows EAB to consider information not offered during the hearing if the party offering that information shows that the party was prevented from doing so by factors or circumstances beyond the party's reasonable control. That claimant's call was abruptly dropped before she was able to cross examine the employer's witness or to offer her own testimony about the work separation was a factor or circumstance beyond her reasonable control. Accordingly, claimant's request to present new information is allowed. However, rather than merely entering claimant's letter into evidence, this matter is remanded for further proceedings to allow the ALJ, as appropriate, to develop the information contained in the letter and to assess its credibility through claimant's live testimony. Principles of due process also require that the employer have an opportunity to cross-examine claimant and to otherwise respond to claimant's testimony. Hearing Decision 17-UI-86289 is therefore reversed, and this matter remanded for further proceedings and a hearing decision based on a complete record of the proceedings.

**DECISION:** Hearing Decision 17-UI-86289 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:** July 24, 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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