

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0778

Reversed & Remanded

PROCEDURAL HISTORY: On May 5, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was available for work from January 29, 2017 to February 4, 2017 (decision # 112506). The employer filed a timely request for hearing. On June 5, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for June 20, 2017 at 1:30 p.m. On June 20, 2017, ALJ R. Frank conducted a hearing, at which claimant failed to appear, and issued Hearing Decision 17-UI-86155, concluding claimant was not available for work from January 29, 2017 to February 4, 2017. On June 28, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT¹: (1) Claimant received notice that the hearing in this matter was scheduled for June 20, 2017 and planned to participate in it. June 20 was also claimant's children's last day of school, and they were being released from school around the same time as the hearing. Claimant made arrangements for someone else to pick up her children when they were released from school so she could participate in the hearing.

(2) At the time of the hearing on June 20, claimant "received a last minute call that our originally prearranged childcare/pickUp [*sic*] arrangements were unable to get my children." EAB Exhibit 1. Claimant had to drive to the school to collect her children because no one else was available to do so and she could not leave the children stranded at the school. Claimant was on school grounds at the time of the scheduled hearing.

CONCLUSIONS AND REASONS: Hearing Decision 17-UI-86155 is reversed and this matter remanded for additional proceedings.

¹ The findings of fact in this decision are based upon claimant's written argument, which is hereby marked as EAB Exhibit 1 and admitted into evidence. A copy of EAB Exhibit 1 has been mailed to the parties along with this decision. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. Unless such objection is received and sustained, the noticed fact will remain in the record as EAB Exhibit 1.

Claimant asked for a new hearing on the grounds that a last minute problem with her children prevented her from attending it. Claimant's request for relief is construed as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. Claimant's circumstances, as described in the findings of fact, were sufficient to establish that it was more likely than not beyond her reasonable control to attend the hearing at its scheduled time. Her urgent circumstances – the need to pick up her children at the time the hearing was scheduled to begin --also reasonably prevented her from contacting OAH to request that the hearing be postponed. Claimant's request to submit new information about her work separation is, therefore, allowed. Absent claimant's evidence, the record in this matter is incomplete; this matter is therefore reversed and remanded to allow claimant the opportunity to provide evidence about her work separation.

DECISION: Hearing Decision 17-UI-86155 is set aside, and this matter remanded for further proceedings consistent with this order.²

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

DATE of Service: June 30, 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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² **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-86155 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.