

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0855

Reversed & Remanded

PROCEDURAL HISTORY: On June 15, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 94042). Claimant filed a timely request for hearing. On June 29, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for July 12, 2017. On July 12, 2017, ALJ Lohr conducted a hearing, at which the employer failed to appear, and on July 14, 2017 issued Hearing Decision 17-UI-88051, concluding that claimant's discharge was not for misconduct. On July 19, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: At all relevant times, the employer's address of record was on Northrup Street in Portland, Oregon. OAH mailed notice of the June 12, 2017 hearing to an address in Silver Springs, Maryland. The employer's copy of the notice of hearing was returned to OAH by the U.S. Postal Service. The employer did not receive notice of the hearing.

CONCLUSIONS AND REASONS: This matter is reversed as unsupported by a complete record, and remanded to OAH for additional proceedings.

With its application for review, the employer submitted a written argument in which it asked for a new hearing. The employer'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. In support of its request, the employer argued that it did not receive notice of the July 12th hearing in this matter. It is more likely than not that the employer's failure to receive notice of the July 12th hearing occurred because OAH did not address the notice to the employer's "last known address as shown by the record of the Director" as required by OAR 471-040-0015(1) (August 1, 2004), which was a factor or circumstance beyond the employer's reasonable control. Due process requires that this matter be remanded and the employer afforded a reasonable opportunity for a fair hearing on the merits of

decision # 94042, and claimant the opportunity to respond to the employer's evidence. *See accord* ORS 657.270(4)(a), OAR 471-040-0015.

Note: The failure by any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-88051 or return this matter to EAB. Only a timely application for review of any subsequent hearing decision will cause this matter to return to EAB.

DECISION: Hearing Decision 17-UI-88051 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 25, 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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