

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1060

Reversed & Remanded

PROCEDURAL HISTORY: On May 26, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 102228). Claimant filed a timely request for hearing. On July 27, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for August 16, 2017. The employer appeared at the designated time but the hearing was rescheduled. On August 16, 2017, OAH mailed notice of the rescheduled hearing set for September 1, 2017. On September 1, 2017, ALJ Meerdink conducted a hearing, at which the employer failed to appear, and on September 1, 2017 issued Hearing Decision 17-UI-91772, concluding claimant's discharge was not for misconduct. On September 6, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 17-UI-91772 is set aside, and this matter remanded.

With its application for review the employer asked for a new hearing on the grounds that it was prevented by circumstances outside its control from attending the hearing. We construe the employer's request as a request for EAB to consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing of the party offering the information shows that circumstances beyond its reasonable control prevented it from presenting the information at the hearing. In support of its request, the employer asserted that, although the employer's representative had planned to attend and scheduled his day in a way that would accommodate his attendance at the September 1st hearing, he encountered unanticipated road construction, traffic delays and wildfires along the route to his work location. Additionally, he experienced an unanticipated loss of cell phone coverage. Notably, the employer had attended the first hearing scheduled in this matter before it was rescheduled, suggesting that the employer's attempts to attend the September 1st hearing were likely earnest and that his inability to do so was more likely than not beyond his reasonable

control. The employer's request is, therefore, allowed. Hearing Decision 17-UI-91772 is therefore reversed, and this matter remanded for additional proceedings.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-91772 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.

DECISION: Hearing Decision 17-UI-91772 is set aside, and this matter remanded for further proceedings consistent with this order.

J. S. Cromwell and D. P. Hettle.

DATE of Service: September 18, 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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