

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1084**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On July 19, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 73613). Claimant filed a timely request for hearing. On August 23, 2017, ALJ McGorin conducted a hearing, at which the employer failed to appear, and issued Hearing Decision 17-UI-90967, concluding that claimant's discharge was not for misconduct. On September 12, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer asked for another opportunity to present evidence about claimant's work separation. 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 explained that he had planned to appear at the hearing and present evidence about claimant's discharge, but was prevented from doing so due to the sudden traumatic deaths of two family members the day before the hearing, which caused him to experience shock, feel devastated, and left him unable to attend to business or participate in the hearing when it was scheduled. In that context, it appears more likely than not that appearing at the hearing and presenting evidence was beyond the employer's reasonable control, and additional proceedings are therefore necessary. The hearing decision under review is, therefore, reversed, and this matter remanded to OAH for additional proceedings.

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-90967 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-90967 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 26, 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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