

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1220**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On September 8, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 114642). Claimant filed a timely request for hearing. On September 26, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for October 10, 2017 at 10:45 a.m. On October 10, 2017, ALJ Janzen conducted a hearing, at which the employer failed to appear, and issued Hearing Decision 17-UI-94227, concluding claimant was discharged, not for misconduct. On October 18, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Hearing Decision 17-UI-94227 is reversed, and this matter remanded for another hearing and hearing decision on whether claimant is disqualified from receiving benefits based on his work separation from the employer.

By letter with its application for review, the employer requested to reschedule the hearing and present new information regarding claimant's work separation, including information contained in text messages from the claimant. 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's representative states that he or she was in an area with poor cellular telephone reception at the time of the hearing, and made multiple attempts to call in to the hearing but was unsuccessful. We infer that the employer's representative believed he or she was in an area with sufficient reception because he or she attempted to call repeatedly at the time of the hearing. The employer representative was unable to connect to the hearing through no fault of his or her own, which was a circumstance beyond the employer's reasonable control that would allow EAB to consider the employer's new information. Due process of law requires that claimant be allowed an opportunity to respond to the employer's new information. Hearing Decision 17-UI-94227 therefore is reversed, and this matter remanded to OAH for another hearing and hearing decision on whether claimant is disqualified from receiving benefits based on his work separation from the employer.

**DECISION:** Hearing Decision 17-UI-94227 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: October 30, 2017**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-94227 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.

**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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