

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1230**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On July 13, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 70823). Claimant filed a timely request for hearing. On September 19, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for October 4, 2017. On October 4, 2017, ALJ Scott conducted a hearing, at which the employer failed to appear, and on October 10, 2017, issued Hearing Decision 17-UI-94107, concluding the employer discharged claimant, but not for misconduct. On October 24, 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.<sup>1</sup> 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 has "had MS for over 23 years...[which]...has left him in an electric wheelchair and disabled...[at best] and...in worse times...[mostly]...in bed." EAB Exhibit 1. He went on to explain that "during the period in question" he had "a series of small MS attacks" which "left [him] not feeling well" with the ability to do "very little" and that he did not find out about the hearing until it was over. EAB Exhibit 1. 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.

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<sup>1</sup> This decision is based upon the employer's written argument, which EAB has marked as EAB Exhibit 1 and included in the record of this case. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection, within ten days of our mailing this decision. OAR 471-041-0090 (October 29, 2006). Unless such objection is received and sustained, EAB Exhibit 1 will remain in the record.

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-94107 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-94107 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 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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