

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1247

Reversed & Remanded

PROCEDURAL HISTORY: On August 24, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 113803). The employer filed a timely request for hearing. On September 22, 2017, the Office of Administrative Hearings (OAH) mailed a notice of a hearing scheduled for October 6, 2017. On October 6, 2017, ALJ Griffin conducted a hearing at which claimant failed to appear, and on October 10, 2017 issued Hearing Decision 17-UI-94123, concluding claimant voluntarily left work without good cause. On October 25, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 17-UI-94123 is reversed and this matter remanded for another hearing on whether claimant is disqualified from receiving benefits based on her work separation from the employer.

In her application for review, claimant submitted written argument in which she asked EAB to consider new information, including documented information, regarding her work separation that was not received into evidence at the hearing due her failure to appear.¹ The new information is relevant and arguably material to EAB's determination of whether claimant is disqualified from receiving benefits based on her work separation. OAR 471-041-0090 (October 29, 2006) allows EAB to consider such information when the party offering the information establishes that factors or circumstances beyond the party's reasonable control prevented the party from appearing at the hearing and offering the information into evidence at the hearing.

In support of her request, claimant asserted that she has experienced problems in receiving her mail at her apartment complex for "many years," that she and other tenants in her apartment building sometimes received each other's mail and not their own, and that they and the apartment manager have complained

¹ Claimant's written argument and documentary evidence are hereby marked as EAB Exhibits 1 and 2, respectively, admitted into evidence, and have been mailed to the parties along with this decision. Any party that objects to their admission may do so at the hearing on remand. Unless any such objection is sustained by the ALJ, EAB Exhibits 1 and 2 will remain in the record.

to the U.S. Postal Service. EAB Exhibit 1. Claimant further asserted that she did not receive the September 22, 2017 notice of decision # 113803 in the mail until after 5:00 p.m. on October 4, 2017, and therefore did not have sufficient time to collect her evidence, send copies to the other parties, or make “accommodations to participate in the hearing.” *Id.* Finally, claimant asserted that because she did not receive the notice of hearing until after business hours on October 4th, she was not able to contact OAH until October 5th, at which time she informed OAH that she was unable to participate in the hearing on October 6, 2017, and apparently was not granted a postponement. *Id.*

Claimant assertions establish that factors and circumstances beyond her reasonable control prevented her from appearing at the hearing and offering her information into evidence at that time. Claimant’s request for EAB to consider her new information therefore is allowed. Due process of law requires that the employer be allowed an opportunity to respond to claimant’s new information. Hearing Decision 17-UI-94123 therefore is reversed, and this matter remanded for another hearing on whether claimant is disqualified from receiving benefits based on her work separation from the employer.

DECISION: Hearing Decision 17-UI-94123 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: November 7, 2017

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-94123 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. 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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