

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1407

Reversed & Remanded

PROCEDURAL HISTORY: On November 1, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 142920). Claimant filed a timely request for hearing. On November 20, 2017, the Office of Administrative Hearings (OAH) mailed the parties notice of a hearing scheduled for Monday, December 4, 2017, but mailed the employer's notice of hearing to the wrong address. On Tuesday, November 28, 2017, OAH mailed the parties an amended notice of the hearing scheduled for December 4, 2017, and mailed the employer's notice to the correct address. On December 4, 2017, ALJ Griffin conducted a hearing at which the employer failed to appear, and on December 5, 2017 issued Hearing Decision 17-UI-98184, concluding that claimant had good cause to quit working for the employer. On December 11, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 17-UI-98184 is reversed, and this matter remanded for another hearing and hearing decision.

In its application for review, the employer asked to "re-open this matter," stating that it failed to appear at the hearing because OAH mailed the first notice of hearing to the wrong address, and it did not receive the amended notice until "the hearing had already taken place." The employer also offered information regarding claimant's work separation, and on December 15, 2017 offered additional information for EAB's consideration of whether claimant had good cause to quit working for the employer.

The employer's filings are construed as a request for EAB to consider new information under OAR 471-040-0090 (October 29, 2006). Under that rule, EAB may consider new information that is not part of the record if the information is relevant and material to EAB's determination and the party offering the information demonstrates that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. Here, the employer's new information is relevant and material to EAB's determination of whether claimant had good cause to quit working for the employer. In addition, OAH's failure to mail the first notice of hearing to the employer's correct address, and the employer's failure to receive the amended notice until after the hearing had already taken place, were

circumstances beyond the employer's reasonable control that prevented it from appearing at the hearing and offering its information into evidence at that time.

The employer's request for EAB to consider its new information therefore is granted. Due process of law requires that claimant be allowed an opportunity to respond to the employer's new information. Hearing Decision 17-UI-98184 therefore is reversed, and this matter remanded for another hearing and hearing decision on whether claimant had good cause to quit working for the employer. The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-98184 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-98184 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: December 21, 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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