

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1452

Reversed & Remanded

PROCEDURAL HISTORY: On November 1, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 160300). The employer filed a timely request for hearing. On November 14, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for November 28, 2017. On November 28, 2017, ALJ Meerdink conducted a hearing at which claimant failed to appear, and on November 29, 2017 issued Hearing Decision 17-UI-97749, concluding claimant's discharge was for misconduct. On December 19, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

In his written argument, claimant complained that he did not receive notice of the November 28th hearing, and so was unable to offer evidence into the hearing record. Claimant's complaint is construed as a request for EAB to consider new information under OAR 471-041-0090 (October 29, 2006). OAR 471-041-0090(2)(b) allows EAB to consider new information 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 his claim, claimant explained that he recently installed new mail boxes at his residence, and, as a result, the mail delivery person put claimant's mail in another person's mailbox, resulting in his failure to receive notice of the hearing. Claimant has therefore established that it is more likely than not that he was deprived of notice of the hearing, and therefore unable to present evidence at the hearing, due to circumstances beyond his reasonable control. His request to have EAB to consider new information under OAR 471-041-0090 is therefore allowed, and this matter is set aside as unsupported by a complete record and remanded to OAH for new proceedings.

DECISION: Hearing Decision 17-UI-97749 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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