

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0074**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On December 7, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct, within 15 days of his planned voluntary leaving without good cause (decision # 75022). Claimant filed a timely request for hearing. On December 21, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for January 4, 2018. On January 4, 2018, ALJ Clink conducted a hearing, at which the employer failed to appear, and on January 8, 2018 issued Hearing Decision 18-UI-100390, concluding claimant voluntarily left work with good cause. On January 19, 2018, the employer an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** Sometime prior to December 21, 2107, the employer moved its office to Corporate Plaza Drive in Colorado Springs. On December 21, 2017, OAH mailed the employer's copy of the notice of hearing to 903 NW F Street, Building E in Grants Pass, Oregon. The employer did not receive notice of the January 4<sup>th</sup> hearing until January 5<sup>th</sup>.

**CONCLUSIONS AND REASONS:** Hearing Decision 18-UI-100390 should be set aside and this matter remanded for additional evidence as to whether the employer had good cause for missing the hearing.

The employer provided EAB with additional information in support of its application for review. EAB may only 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. OAR 471-040-0090 (October 29, 2006). In this case, the employer was prevented from submitting the information into the hearing record because it did not receive notice of the January 4<sup>th</sup> hearing until January 5<sup>th</sup>. The employer attributed its late receipt of the notice of hearing to a change of address from Grants Pass, Oregon to Colorado Springs, Colorado. The information the employer has submitted so far suggests the possibility that the employer might be entitled to submit new information in this case, but the information is not conclusive. In order to determine whether the employer's non-receipt of the notice under the circumstances described entitles the employer to present additional information, additional evidence about those circumstances is required. For example, evidence about when the

employer moved its office, when the employer notified the Department of its change of address, and, to the extent there was any delay between the move and the change of address, what the reason for the delay was. This matter is therefore remanded to OAH for a determination of whether or not the employer has good cause to reopen the hearing in this matter. If the ALJ determines on remand that the employer did have good cause to reopen the hearing, the ALJ should conduct a new hearing on the merits of claimant's work separation.

**DECISION:** Hearing Decision 18-UI-100390 is set aside, and this matter remanded for further proceedings consistent with this order.

J. S. Cromwell and D. P. Hettle;  
S. Alba, not participating.

**DATE of Service: January 25, 2018**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 18-UI-100390 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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