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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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<p>EMPLOYMENT APPEALS BOARD DECISION 2018-EAB-0173</p>
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Reversed & Remanded

PROCEDURAL HISTORY: On November 16, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 70806). Claimant filed a timely request for hearing. On January 26, 2018, ALJ Scott conducted a hearing at which the employer failed to appear, and on January 31, 2018 issued Hearing Decision 18-UI-102132, concluding claimant voluntarily left work with good cause and was not disqualified from receiving benefits. On February 17, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

With his application for review, the employer submitted additional information about claimant's work separation and suggested that the employer wanted the opportunity to testify about it. The employer's submission is construed as a request for EAB to consider additional evidence, which EAB may do if the information is relevant and material to EAB's determination, and if the employer shows that factors or circumstances beyond its reasonable control prevented the employer from offering the information into evidence at the hearing. OAR 471-041-0090(2); *see also* OAR 471-040-0040 (an individual has "good cause" for failing to appear at a hearing if the individual establishes existence of an excusable mistake or "factors beyond an applicant's reasonable control").

In support of his request, the employer argued that he intended to appear at the hearing but was unable to do so "due to a work emergency" involving a situation in which the "delivery vehicle broke down and I needed to pick up my driver who was stranded." The employer's argument suggested that good cause might exist, but because the argument did not address things such as when the emergency arose, how much notice before the scheduled hearing time the employer had, whether he considered or had time to request that the hearing be postponed, and whether anyone else might have been available to either attend the hearing or pick up the stranded driver, the evidence does not conclusively support a finding that the employer is, or is not, entitled to present additional evidence about the merits of claimant's work separation.

Due process of law requires that the employer be given the opportunity to fully explain the circumstances that resulted in his failure to appear at the hearing, and that claimant be given the opportunity to respond. Hearing Decision 18-UI-102132 must therefore be reversed, and this matter

remanded for a hearing on the additional evidence/“request to reopen” issue, and, depending on the ALJ’s decision on that issue, possibly a hearing on the merits of the work separation. Only if the employer establishes “good cause” for the failure to appear would the employer then be permitted to offer evidence regarding the merits of claimant’s work separation.

DECISION: Hearing Decision 18-UI-102132 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: March 13, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 18-UI-102132 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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