

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0268**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On January 19, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 140134). Claimant filed a timely request for hearing. On February 23, 2018, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for March 9, 2018. On March 9, 2018, ALJ M. Davis conducted a hearing at which the employer failed to appear, and on March 12, 2018 issued Hearing Decision 18-UI-104978, concluding claimant's discharge was not for misconduct. On March 15, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

In the employer's written argument, it asserted that it did not receive the February 23, 2018 notice of hearing, and was therefore unaware of the March 9, 2018 hearing and unable to offer evidence into the hearing record. The employer's argument 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 its request, the employer asserted that it has a "very meticulous mail system between the post office and our office," the same person handles the mail every day, and in a six-year period, only two known pieces of mail the employer expected to receive were not received. Although documents sent through the U.S. Postal service are presumed to have been received by the addressee, the presumption is subject to evidence to the contrary. OAR 137-003-0520(9). The fact that the employer has implemented a "very meticulous" system to consistently handle mail that is received so as not to lose or misplace it suggests that had the notice of hearing been delivered to the employer by the U.S. Postal Service it is likely that the employer would have received it and attended the scheduled hearing. The employer has therefore established the likelihood that the notice of hearing was not delivered, thus depriving the employer of notice of the hearing for reasons beyond its reasonable control. Because the employer was deprived of reasonable opportunity for a fair hearing, Hearing Decision 18-UI-104978 must be reversed and this matter remanded for further proceedings.

**DECISION:** Hearing Decision 18-UI-104978 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 19, 2018

**NOTE:** The failure by any party to appear at the hearing on remand will not reinstate Hearing Decision 18-UI-104978 or return this matter to EAB. Only a timely application for review of any 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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