

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0303

Reversed & Remanded

PROCEDURAL HISTORY: On February 20, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 111233). Claimant filed a timely request for hearing. On March 5, 2018, the Office of Administrative Hearings mailed a notice of hearing for March 19, 2018 to the parties. On March 19, 2018, ALJ Snyder conducted a hearing, and on March 23, 2018 issued Order No. 18-UI-105869, concluding claimant voluntarily left work with good cause. On March 27, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Order No. 18-UI-105869 is reversed and this matter remanded for further development of the record.

The employer submitted written argument to EAB. In its written argument, the employer asked EAB to consider new information about claimant's work separation that it did not provide at hearing because the employer's owners were the "only ones at the company to adequately present the information" necessary for the hearing, were unable to attend the hearing because they were travelling by airplane "the entire day of the hearing," and OAH denied the employer's request to postpone the hearing. The employer's request is construed as a request for EAB to review OAH's denial of the employer's request to have the March 19, 2018 hearing postponed.

OAR 471-040-0021(2) and (3) (August 1, 2004) provide that OAH may grant postponement of a hearing if the "request is promptly made after the party becomes aware of the need for postponement" and "[t]he party has good cause, as stated in the request, for not attending the hearing at the time and date set." "Good cause" exists when "the circumstances causing the request are beyond the reasonable control of the requesting party [and] failure to grant the postponement would result in undue hardship to the requesting party."

Here, the notice of hearing for the March 19, 2018 hearing was mailed on March 5, 2018. During the hearing, the employer's witness noted that the employer's owners were overseas and "couldn't make this hearing." Audio Record at 20:06 to 20:09. In its written argument, the employer asserted that its office assistant called OAH and requested a postponement after the employer received the notice of

hearing on March 9 “and was denied.” However, the date of the employer’s request for postponement and OAH’s denial and reasoning for its denial are not contained in the record. The hearing record therefore lacks sufficient information to determine whether OAH erred in denying the employer’s request for a postponement for what appears to have been good cause.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Absent sufficient information in the hearing record to determine when the employer requested a postponement and the reasons the employer provided to OAH for its inability to attend the hearing at the time and date set, Order No. 18-UI-105869 is reversed, and this matter remanded for a hearing on that issue and, if necessary, another hearing on whether claimant is disqualified from receiving benefits based on his work separation from the employer.

DECISION: Order No. 18-UI-105869 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: April 24, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-105869 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.

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