

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0414

Reversed & Remanded

PROCEDURAL HISTORY: On March 8, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 71939). The employer filed a timely request for hearing. On April 2, 2018, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for April 16, 2018. On April 16, 2018, ALJ Seideman conducted a hearing, at which claimant failed to appear, and on April 18, 2018 issued Order No. 18-UI-107618, concluding the employer discharged claimant for misconduct. On April 24, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: On approximately March 13, 2018, claimant last claimed a week of benefits for week 10-18.¹ OAH mailed notice of the April 16th hearing to claimant during week 14-18.

CONCLUSIONS AND REASONS: Order No. 18-UI-107618 is reversed and this matter is remanded.

In written argument, claimant asked for a new hearing on the grounds that he did not receive notice of the April 16th hearing prior to the hearing, and, therefore, was unable to participate in the hearing. Claimant's request for relief is construed as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing 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 request, claimant explained that he had been out of town working in Breitenbush and Lowell and was therefore unaware of the hearing. Although individuals claiming benefits are generally expected to regularly monitor their mail or make arrangements for their mail to be handled when they are out of town, the obligation to monitor the mail ends after the individual's business with the Department ends. In this case, it appears from Department records that on the date OAH sent notice of

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

the April 16th hearing claimant had not claimed benefits for approximately 4 weeks. Decision # 71939 was in claimant's favor, and this record fails to show that claimant had any other outstanding business with the Department that would have triggered an obligation on claimant's part to monitor his mail, or notify the Department if he was going to be out of communication for some period of time. For those reasons, we conclude that claimant's failure to receive notice of the April 16th hearing in this case was the result of circumstances beyond his reasonable control, and that claimant is entitled to a new hearing on the merits of decision # 71939.

We note that claimant asked on his application for review that EAB communicate with him by email. Claimant is advised, however, that the result of this EAB decision is that OAH will schedule a new hearing, and OAH generally sends notices of hearing via regular mail. If claimant lacks access to his mail at his address of record during the period following receipt of this decision, claimant should call OAH to discuss how he might receive notice of the new hearing in this case.

DECISION: Order No. 18-UI-107618 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: May 3, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-107618 or return this matter to EAB. Only a timely application for review of the subsequent ALJ Order will cause this matter to return to EAB.

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