

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0460

Reversed & Remanded

PROCEDURAL HISTORY: On March 21, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer with good cause (decision # 135450). The employer filed a timely request for hearing. On April 6, 2018, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for April 20, 2018 at 8:15 a.m. On April 20, 2018, ALJ Monroe conducted a hearing at which claimant failed to appear, and on April 25, 2018 issued Order No. 18-UI-108142 concluding that claimant quit working for the employer without good cause. On May 1, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted written argument with his application for review in which he asked to have his case reopened and the April 20, 2018 hearing rescheduled. In support of that request, claimant asserted that he was unable to attend the April 20, 2018 hearing because he was working at his part-time job and “was unable to get off work in time to attend the hearing.” Claimant’s request for relief is construed as a request for the consideration of new information under OAR 471-040-0090(2) (October 29, 2006), which allows such information to be considered when the party offering the information establishes that factors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing.

Claimant’s apparent inability to get off work in time to attend the April 20, 2018 hearing suggests that it may have been beyond his reasonable control to appear at hearing and offer his information into evidence at that time. However, further inquiry into the facts necessary for a determination on that issue is required, including, but not limited to, why claimant was unable to get off work in time to attend the hearing, when he first became aware that he would be unable to do so, and what efforts, if any, he made to obtain permission to leave work early or contact OAH or the ALJ to request that the hearing be postponed. Order No. 18-UI-108142 therefore is reversed, and this matter remanded for a hearing on whether claimant is entitled to another opportunity for a hearing on the merits of decision # 135450 and, if so, on whether he should be disqualified from receiving benefits based on a work separation from the employer.

DECISION: Order No. 18-UI-108142 is set aside, and this matter remanded for further proceedings consistent with this order.¹

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

DATE of Service: May 8, 2018

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¹ The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-108142 or return this matter to EAB. Only a timely application for review of the subsequent hearing order will cause this matter to return to EAB.