

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0501

Reversed & Remanded

PROCEDURAL HISTORY: On March 5, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant not for misconduct, and that claimant therefore was not disqualified from receiving benefits, and that wages paid to claimant before his discharge would not be canceled (decision # 131346). The employer filed a timely request for hearing. On April 20, 2018, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for May 4, 2018. On May 4, 2018, ALJ Janzen conducted a hearing at which claimant failed to appear, and on May 8, 2018, issued Order No. 18-UI-108859, concluding that wages paid to claimant before his discharge would not be canceled, but that the employer discharged claimant for misconduct. On May 11, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Order No. 18-UI-108859 is reversed, and this matter remanded to OAH for another hearing.

With his application for review, claimant submitted written argument in which he asked for another hearing, stating that he was unable to attend the May 4, 2018 hearing because he is a “heart patient” and was in a hospital emergency room for “coronary problems.” Claimant’s request is construed as a request for the consideration of new information under OAR 471-040-0090 (October 29, 2006), under which new information may 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 emergency room hospitalization on the time of the hearing was factor or circumstance beyond his reasonable control that prevented him from attending the hearing and offering his information into evidence at that time. Claimant’s request for the consideration of new information therefore is granted, Order No. 18-UI-108859 is reversed, and this matter remanded for another hearing on the merits of decision # 131346.

DECISION: Order No. 18-UI-108859 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: May 17, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-108859 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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