

State of Oregon  
**Employment Appeals Board**  
875 Union St. N.E.  
Salem, OR 97311

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0521**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On April 18, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 73526). Claimant filed a timely request for hearing. On May 10, 2018, ALJ Scott conducted a hearing, at which the employer failed to appear, and on May 16, 2018, issued Order No. 18-UI-109529, concluding that the employer discharged claimant, but not for misconduct. On May 21, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Order No. 18-UI-109529 should be reversed and this matter remanded for additional proceedings.

With its application for review, the employer provided new information about claimant's work separation and asserted that "the original hearing date was missed due to the death of an immediate family member of the Executive Director." Written Argument at 1. The employer'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. The employer's assertion suggests that factors or circumstances beyond the employer's reasonable control might have prevented the executive director or the employer in general from attending the hearing, but additional facts are necessary before a determination can be reached. Because it appears the record might not be complete, this matter must be reversed and remanded to OAH to obtain additional information.

The threshold issue on remand is whether, having failed to attend the hearing, the employer may still be allowed to present information about claimant's work separation. The employer must establish that factors or circumstances beyond its reasonable control prevented it from appearing at the May 10, 2018 hearing and presenting its evidence. The ALJ should ask the employer how the death of the immediate family member of the executive director prevented the employer from appearing at the hearing and presenting its evidence. The ALJ should ask the employer if there was no one else that could have attended the hearing, represented the employer and presented its evidence in the absence of the executive director, and if not, why not. The ALJ should ask the employer about the timing of the event

that prevented the attendance of the executive director at the hearing and whether it attempted to request a postponement due to that circumstance prior to or at the May 10<sup>th</sup> hearing. The ALJ should follow up with the employer on any other relevant lines of inquiry, and allow claimant the opportunity to respond to the employer's evidence. Only if the ALJ determines that the employer proved that, more likely than not, factors or circumstances beyond its reasonable control prevented the employer from appearing during the May 10<sup>th</sup> hearing and presenting its evidence about the work separation would the employer then be allowed another opportunity to do so.

**DECISION:** Order No. 18-UI-109529 is set aside, and this matter remanded for further proceedings consistent with this order.<sup>1</sup>

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

**DATE of Service: June 18, 2018**

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<sup>1</sup> **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-109529 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.