

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0545

Order No. 18-UI-108968 Reversed & Remanded
La Orden 18-UI-108968 Revocada y Remitida para Otra Audiencia

PROCEDURAL HISTORY: On April 4, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 131329). Claimant filed a timely request for hearing. On May 3, 2018, ALJ Frank conducted a hearing, at which the employer failed to appear, and on May 9, 2018 issued Order No. 18-UI-108968, concluding that the employer discharged claimant not for misconduct and claimant was not disqualified from receiving unemployment insurance benefits. On May 29, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer submitted additional information about claimant's work separation and asked for another hearing. The employer's submission is construed as a request for EAB to consider additional evidence, which EAB may do if the information is relevant and material to EAB's determination, and if the employer shows that factors or circumstances beyond its reasonable control prevented the employer from offering the information into evidence at the hearing. OAR 471-041-0090(2); *see also* OAR 471-040-0040 (an individual has "good cause" for failing to appear at a hearing if the individual establishes existence of an excusable mistake or "factors beyond an applicant's reasonable control").

In support of its request, the employer argued that it attempted to appear at the hearing and that its representative "tried multiple times to connect to [the hearing] . . . and even contacted the appeals office with no success connecting to the hearing." The employer's argument suggests that good cause might exist, but because the argument did not address things such as when and how the representative attempted to connect to the hearing and the details of what it did when it was unable to connect, the evidence does not conclusively support a finding that the employer is, or is not, entitled to present additional evidence about the merits of claimant's work separation.

Due process of law requires that the employer be given the opportunity to explain fully the circumstances that resulted in its failure to appear at the hearing, and that claimant be given the opportunity to respond. Order No. 18-UI-108968 must therefore be reversed, and this matter remanded for a hearing on the additional evidence/"request to reopen" issue, and, depending on the ALJ's decision

on that issue, possibly a hearing on the merits of the work separation. Only if the employer establishes “good cause” for the failure to appear would the employer then be permitted to offer evidence regarding the merits of claimant’s work separation.

DECISION: Order No. 18-UI-108968 is set aside, and this matter remanded for further proceedings consistent with this order. *La Orden de la Audiencia 18-UI-108968 se pone a un lado, y esta materia se remite para otros procedimientos constantes con esta orden.*

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

DATE of Service: June 27, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-108968 or return this matter to EAB. Only a timely application for review of the subsequent Order will cause this matter to return to EAB.

NOTA: La falta de cualquier parte de comparecer en la audiencia sobre la remisión no reinstalará la Orden 18-UI-108968 ni devolverá esta orden a la EAB. Solamente una aplicación oportuna para revisión de la orden subsiguiente de la nueva audiencia volverá este asunto a la EAB.

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