

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0731

Reversed & Remanded

PROCEDURAL HISTORY: On June 25, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 143845). Claimant filed a timely request for hearing. On July 6, 2018, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for July 19, 2018. On July 19, 2018, ALJ Seideman conducted a hearing, at which the employer failed to appear, and issued Order No. 18-UI-113475, concluding the employer discharged claimant, but not for misconduct. On July 23, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

With its application for review, the employer presented additional evidence about claimant's work separation and requested "a reopening, to clear up the facts." 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 argued, in essence, that she was prepared to attend the hearing and had the notice of hearing with her on July 19th, but could not attend the hearing because she "was helping my widowed Mother at her boarding stable after horses escaped at 4 am and we were catching them and putting them away safely." She further explained that her husband could not attend the hearing on the employer's behalf because she had the notice of hearing, leaving him without the information he needed to call in to the hearing.

The circumstances that prevented the employer from attending the hearing and presenting evidence about claimant's work separation might have amounted to circumstances beyond its reasonable control that would entitle the employer to additional proceedings on the merits of decision # 143845. However, additional evidence is needed before that determination can be made. This matter is therefore set aside, and remanded to OAH for additional proceedings. The ALJ should first ascertain whether or not the employer has "good cause" under OAR 471-040-0040 to reopen the July 19th hearing on decision # 143845. Only if the employer establishes good cause should the ALJ then hold a new hearing on the merits of decision # 143845.

DECISION: Order No. 18-UI-113475 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: July 26, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-113475 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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