

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0772**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On June 14, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 93815). Claimant filed a timely request for hearing. On July 6, 2018, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for July 18, 2018. On July 18, 2018 ALJ Snyder conducted a hearing at which the employer failed to appear, and on July 26, 2018 issued Order No. 18-UI-113894 concluding that claimant's discharge was not for misconduct. On August 8, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer requested that the July 18, 2018 hearing be reopened to allow the employer an opportunity to offer new information regarding claimant's work separation. The employer's request is construed as a request for consideration of new information under OAR 471-040-0090 (October 29, 2006). Such information may be considered if 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. OAR 471-040-0090(2) (October 29, 2006).

In support of its request, the employer asserted that upon receiving the July 6, 2018 notice of the July 18, 2018 hearing, it contacted OAH requesting an alternative hearing date, and OAH denied the request. That assertion is consistent with Exhibit 1, faxed by the employer to OAH on July 13, 2018, in which the employer asserted that its representatives would not be available for the July 18, 2018 hearing and that, according to OAH, the employer was not permitted to reschedule the hearing date. The employer therefore established that it made what amounted to a request for a postponement sometime between July 6 and 13, 2018, and that OAH denied the request.

A postponement may be granted by OAH at the request of the party if the request is promptly made after the party becomes aware of the need for postponement, and the party has good cause, as stated in the request, for not attending the hearing at the time and date set. OAR 471-040-0021(2) (August 1, 2004). Good cause exists when the circumstances causing the request are beyond the reasonable control of the requesting party, and failure to grant the postponement would result in undue hardship to the requesting party.

The employer asserted that upon receiving the notice of hearing, it requested a postponement because its representatives were going to be out of the country on the hearing date attending a business function that had been scheduled months in advance, which the employer had no authority to reschedule. The employer's assertion suggests that the employer may have made its request promptly after becoming aware of the need for postponement, that the employer had good cause, as stated in the request, for not attending the hearing at the time and date set, and that OAH therefore may have erred in denying the request. However, the hearing record contains no record of why OAH denied the employer's request. Further inquiry into the facts necessary for a determination of whether OAH erred in denying the employer's request for a postponement therefore is required.

Order No. 18-UI-113894 therefore is reversed, and this matter remanded for a hearing on whether factors or circumstances beyond the employer's reasonable control prevented it from offering its information into evidence at hearing, including whether OAH erred in denying the employer's request for a postponement, and, if so, another hearing on the merits of decision # 93815.

**DECISION:** Order No. 18-UI-113894 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** August 13, 2018

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-113894 or return this matter to EAB. Only a timely application for review of the subsequent Order will cause this matter to return to EAB.

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