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

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<p>EMPLOYMENT APPEALS BOARD DECISION 2018-EAB-0876</p>
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Reversed & Remanded

PROCEDURAL HISTORY: On July 20, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 143024). Claimant filed a timely request for hearing. On August 22, 2018, the Office of Administrative Hearings (OAH) served notice of a telephone hearing scheduled for September 4, 201. On September 4, 2018, ALJ Seideman conducted a hearing at which the employer failed to appear, and on September 5, 2018 issued Order No. 18-UI-116073 concluding that claimant's discharge by the employer was not for misconduct. On September 7, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Order No. 18-UI-116073 is reversed and this matter remanded for another hearing.

In its application for review, the employer stated that it failed to appear at the September 4, 2018 telephone hearing because its representative, who was out on location, was unable to call into the hearing due cell phone issues, and that by the time the representative was able to notify the employer, the employer already had missed the hearing. We infer from the employer's explanation for its failure to appear at the hearing that it wants to provide information regarding claimant's work separation from the employer. Under OAR 471-041-0090(2) (October 29, 2006), 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. Here, we infer from the employer's statement that its representative's cell phone issues were beyond the representative's reasonable control and prevented the employer from appearing at hearing and offering information into evidence at that time. Order No. 18-UI-116073 therefore is reversed and this matter remanded for another hearing to allow the employer to provide information regarding claimant's work separation, and claimant an opportunity to respond.

DECISION: Order No. 18-UI-116073 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: September 20, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-116073 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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