

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0961

Reversed & Remanded

PROCEDURAL HISTORY: On August 10, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 151642). The employer filed a timely request for hearing. On September 20, 2018, ALJ Janzen conducted a hearing, at which claimant failed to appear, and on September 21, 2018 issued Order No. 18-UI-117045, concluding claimant's discharge was for misconduct. On October 4, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

With his application for review, claimant asked for an appeal, stating that although he did not appear at the hearing, he "disagree[d] with the decision to deny benefits and the opinion of my previous employer." Claimant's request for relief is construed as a request to have EAB consider additional evidence under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing.

In support of his request, claimant argued that he did not receive the notice of hearing in this case. Documents sent through the U.S. Postal service are presumed to have been received by the addressee, subject to evidence to the contrary. OAR 137-003-0520(9). According to claimant, he and others in his household have experienced mail delivery problems and failed to receive several important pieces of mail, to the extent that he is getting a P.O. Box to avoid further delivery issues. Claimant's statement suggests that it is likely a mail delivery problem outside of his reasonable control have resulted in his failure to receive notice of the September 20th hearing. Claimant's request to have EAB consider new information under OAR 471-041-0090 is, therefore, allowed. This matter is therefore reversed, and remanded for a new hearing on the merits of decision # 151642.

DECISION: Order No. 18-UI-117045 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: October 15, 2018

NOTE: The failure by any party to appear at the hearing on remand will not reinstate Order No. 18-UI-117045 or return this matter to EAB. Only a timely application for review of any subsequent Order will cause this matter to return to EAB.

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