

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0962**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On August 30, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 80456). Claimant filed a timely request for hearing. On September 10, 2018, the Office of Administrative Hearings (OAH) served, by mail, notice of a hearing scheduled for September 24, 2018. On September 24, 2018, ALJ Snyder conducted a hearing at which the employer failed to appear and issued Order No. 18-UI-117079, concluding that claimant's discharge was not for misconduct. On October 4, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Order No. 18-UI-117079 is reversed and this matter remanded for another hearing on whether claimant should be disqualified from receiving benefits based on his work separation from the employer.

With its application for review, the employer requested that the hearing be reopened so that the employer can provide information regarding the reason for claimant's discharge. The employer's request is construed as a request for consideration of new information under OAR 471-041-0090 (October 29, 2006). Under OAR 471-041-0090(2), the employer's information may be considered if the employer establishes that factors or circumstances beyond its reasonable control prevented it from appearing at the September 24, 2018 hearing and offer its information into evidence that time.

In support of its request, the employer stated that it did not know that the hearing had been scheduled because a substitute postal worker delivered the September 10, 2018 notice of hearing to the wrong site. More specifically, the substitute postal worker placed the notice in a mailbox that the employer has not used for several years instead of delivering it to the employer's social services office, where its mail is normally delivered. The employer did not discover the postal worker's error until after it received Order No. 18-UI-117079 in the mail.

The employer's statement is sufficient to establish that factors or circumstances beyond its reasonable control prevented it from appearing at the September 24, 2018 hearing and offer its information in to evidence at that time. The employer's request for reconsideration of new information regarding

claimant's discharge is granted. Order No. 18-UI-117079 is reversed and this matter remanded for another hearing on whether claimant should be disqualified from receiving benefits based on a work separation from the employer.

**DECISION:** Order No. 18-UI-117079 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: October 19, 2018**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-117079 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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