

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1078

Reversed & Remanded

PROCEDURAL HISTORY: On October 2, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 112337). The employer filed a timely request for hearing. On November 7, 2018, ALJ Murdock conducted a hearing at which claimant failed to appear, and on November 9, 2018 issued Order No. 18-UI-119548 concluding that claimant's discharge was for misconduct. On November 15, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Order No. 18-UI-119548 is reversed and this matter remanded to the Office of Administrative Hearings for further proceedings.

In his application for review, claimant stated that he did not attend the November 7th hearing because his son had been in a car accident, following which his son required treatment and brain surgery, likely due to injuries sustained in the car accident. Claimant's statement is construed as a request for consideration of new information regarding his work separation from the employer. Such 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. OAR 471-041-0090(2) (October 29, 2006).

Here, claimant's explanation for missing the November 7th hearing and failing to offer information about the work separation into evidence at that time suggests that it might have been due to exigent circumstances at work that were beyond his reasonable control. However, further inquiry is required into the facts necessary for a determination of that issue. Order No. 18-UI-119548 therefore is reversed and this matter remanded to OAH for a hearing on whether claimant had good cause for failing to appear at the hearing and, if so, another hearing on whether claimant should be disqualified from receiving benefits based on his work separation for the employer.

DECISION: Order No. 18-UI-119548 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: November 19, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-119548 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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