

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0033

Hearing Decision 13-UI-06862, Affirmed
Hearing Decision Hearing Decision 13-UI-07076, Reversed and Remanded

PROCEDURAL HISTORY: On September 26, 2013, the Oregon Employment Department (the Department) served two notices of two administrative decisions, one concluding claimant voluntarily left work without good cause (decision # 154146) and the other concluding claimant was not available for work during the period September 8, 2013 through September 21, 2013 (decision # 154505). Claimant filed requests for hearing regarding the administrative decisions. On November 13, 2013, the Office of Administrative Hearings (OAH) served notice of a consolidated hearing scheduled for December 13, 2013 regarding claimant's requests for hearing. On December 13, 2013, ALJ R. Davis conducted a hearing regarding decision # 154146, and on December 19, 2013, issued Hearing Decision 13-UI-06862, affirming the Department's decision. On December 24, 2013, ALJ R. Davis issued Hearing Decision 13-UI-07076, dismissing claimant's request for hearing regarding decision # 154505 on the stated ground that claimant "withdrew [her] request for hearing."¹ On January 6, 2014, claimant filed applications for review of Hearing Decisions 13-UI-06862 and 13-UI-07076 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 13-UI-06862 and 13-UI-07076. For case-tracking purposes, this decision is being issued in duplicate (Employment Appeals Board Decisions 2014-EAB-0033 and 2014-EAB-0034).

EAB reviewed the entire hearing record regarding Hearing Decision 13-UI-06862. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision is **adopted**.

EAB also reviewed the entire hearing record regarding Hearing Decision 13-UI-07076. The ALJ's conclusion that claimant "withdrew the request for hearing" regarding decision # 154505 is not supported by the record which contains no evidence other than what appears to be an unsworn, unsigned memorandum by a Department employee that claimant desired to do so. The ALJ conducted no inquiry of claimant on December 13, 2013 and made no findings of fact as to when or in what manner claimant

¹ Hearing Decision 13-UI-07076 at 1.

allegedly withdrew her hearing request. Accordingly, on this record, there is no credible evidentiary basis on which to determine that fact. Therefore, Hearing Decision 13-UI-07076 must be remanded for further proceedings as necessary to complete the record.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 13-UI-07076 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

DECISION: Hearing Decision 13-UI-06862 is affirmed. Hearing Decision 13-UI-07076 is set aside, and this matter remanded for further proceedings consistent with this order.

Tony Corcoran and D. E. Larson;
Susan Rossiter, not participating.

DATE of Service: February 4, 2014

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310, or visit the website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.