

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0033-R

Reconsideration Granted
Hearing Decision 13-UI-06862, Affirmed
Hearing Decision 13-UI-07076, Affirmed

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, those decisions were issued in duplicate (Employment Appeals Board Decisions 2014-EAB-0033 and 2014-EAB-0034).

On February 4, 2014, EAB issued Appeals Board Decisions 2014-EAB-033 and 2014-EAB-034, in which it affirmed Hearing Decision 13-UI-06862 and reversed and remanded Hearing Decision 13-UI-07076.²

¹ Hearing Decision 13-UI-07076 at 1.

² Hearing Decision 13-UI-07076 was reversed and remanded because the record lacked evidence that claimant withdrew her request for a hearing regarding administrative decision 154505.

In accordance with ORS 657.290(3), EAB has, upon its own motion, reconsidered a portion of Appeals Board Decisions 2014-EAB-033 and 2014-EAB-034. Specifically, EAB has reconsidered its decision to reverse and remand Hearing Decision 13-UI-07076 for failure to provide evidence that claimant withdrew her request for a hearing regarding administrative decision #154505. Upon further examination, the record submitted by OAH has been found to contain a December 4, 2013 “Memo to File / Telephone Record.” This memo, written by an OAH employee, describes a telephone conversation the employee had with claimant in which claimant withdrew her request for a hearing regarding administrative decision # 154505. In accordance with OAR 471-041-0090(3), notice is taken of this document, a copy of which is marked as EAB 1 and included with this decision. A party that objects to notice of EAB 1 must submit any such objection to this office in writing, setting forth the basis of the objection, within ten days of the date on which this decision is mailed. Unless such objection is received and sustained, EAB 1 will remain in the record.

The “Memo to File / Telephone Record” provides sufficient proof of claimant’s withdrawal of her hearing request regarding administrative decision #154505. EAB has reviewed the complete record regarding Hearing Decision 13-UI-07076. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision is **adopted**. Hearing Decision 13-UI-06862 remains undisturbed.

DECISION: Hearing Decisions 13-UI-06862 and 13-UI-07076 are affirmed. .

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

DATE of Service: March 3, 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.