

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0476

*Application for Review Dismissed
Without Prejudice*

PROCEDURAL HISTORY: On January 31, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 125600). Claimant filed a timely request for hearing. On March 10, 2014, ALJ Holmes-Swanson conducted a hearing, and on March 17, 2014, issued Hearing Decision 14-UI-12652, concluding the employer discharged claimant, but not for misconduct. On March 26, 2014, the employer filed an application for review with the Employment Appeals Board (EAB). On April 2, 2014, Holmes-Swanson issued a letter reopening the record until April 9, 2014, and if necessary, an amended order will be issued by April 21, 2014. If no amended order is issued by that date, then the final order issued on March 17, 2014, will be extended to May 12, 2014.

EAB considered the employer's written argument to the extent it was based on the hearing record.

CONCLUSIONS AND REASONS: The employer's application for review is dismissed without prejudice.

ORS 657.275 provides that EAB shall review the record of the case promptly and affirm, modify, or set aside the decision of the ALJ if the Director of the Department or any interested party files a timely application for review. However, it appears the ALJ has initiated further proceedings at OAH and that this matter is not yet ripe for review.¹ We therefore dismiss the employer's application for review without prejudice to allow the proceedings to be completed.

DECISION: The application for review filed March 26, 2014 is dismissed. Hearing Decision 14-UI-12652 remains undisturbed.

¹ By letter dated April 14, 2014, ALJ Holmes-Swanson reopened the hearing record to allow the parties to respond to exhibits had been submitted. The ALJ told the parties that their responses must be submitted to him by April 9, 2014, and explained that "[i]f necessary, an amended order will be issued by April 21, 2014."

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

DATE of Service: April 16, 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.