

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0682

Reversed & Remanded

PROCEDURAL HISTORY: On March 11, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 72207). Claimant filed a timely request for hearing. On March 14, 2014, the Office of Administrative Hearings mailed notice of a hearing scheduled for March 28, 2014. On March 28, 2014, ALJ Vincent conducted a hearing, at which the employer failed to appear, and on April 9, 2014 issued Hearing Decision 14-UI-14684, concluding claimant's discharge was not for misconduct. On April 24, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: OAH mailed the notice of hearing to the employer at 5353 Columbus Street SE in Albany, Oregon. The employer's address of record with the Department was, and is, Corvallis Caring Place, Attn: Lorene Hales, 750 NW 23rd Street in Corvallis, Oregon.

CONCLUSIONS AND REASONS: OAH failed to provide the employer with notice of the March 28th hearing as required by OAR 471-040-0015(1).

OAR 471-040-0015(1)(Notice of Hearing)(August 1, 2004) provides:

To afford all parties a reasonable opportunity for a fair hearing, notice of hearing setting forth the time, date, place, and issue(s) in general shall be personally delivered or mailed at least five days in advance of the hearing to parties or their authorized agents at their last known address as shown by the record of the Director.¹

When a party fails to appear for a hearing, the first issue is whether the absent party was afforded due process of law, i.e., whether the notice of hearing was mailed to the absent party at his or her last known

¹ Cf. ORS 657.270(2), which requires all jurisdictional documents be provided to the parties at least seven days prior to the scheduled hearing.

address as shown by the record of the Director.² Here, OAH failed to mail the notice of hearing to the employer's last known address as shown by Department records. The employer, therefore, lacked notice of the scheduled hearing. Because the employer was deprived of reasonable opportunity for a fair hearing, Hearing Decision 14-UI-14684 must be reversed and this matter remanded for further proceedings.

DECISION: Hearing Decision 14-UI-14684 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter, Tony Corcoran and J.S. Cromwell, *pro tempore*;
D.E. Larson, not participating.

DATE of Service: May 5, 2014

Note: The failure by any party to appear at the hearing on remand will not reinstate Hearing Decision 14-UI-14684 or return this matter to EAB. Only a timely application for review of any subsequent hearing decision will cause this matter to return to EAB.

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.

² If, despite the lack of notice, a decision is issued, the decision may be challenged by the absent party on constitutional grounds. The party need not request reopening or satisfy the requirements of OAR 471-041-0090.