

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0704-R

*Request for Reconsideration Granted  
Reversed and Remanded*

**PROCEDURAL HISTORY:** On March 6, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 94808). Claimant filed a timely request for hearing. On April 11, 2014, ALJ Murdock conducted a hearing in which the employer did not participate, and issued Hearing Decision 14-UI-14974, concluding that the employer discharged claimant but not for misconduct. On April 28, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

On May 7, 2014, the EAB issued Appeals Board Decision 2014-EAB-0704 in which it affirmed the Hearing Decision under review. On May 15, 2014, the employer filed a request for reconsideration.

**CONCLUSIONS AND REASONS:** The employer's request for reconsideration is granted, and the matter is remanded for a new hearing and hearing decision.

In its application for review of Hearing Decision 14-UI-14974, the employer's representative asked for a new hearing, asserting that it never received notice of the April 11 hearing. In Appeals Board Decision 2014-EAB-0704, we rejected the employer's argument because the record showed that the hearing notice was mailed to the employer's address of record. We concluded that although the employer apparently changed its authorized representative, OAH was never notified of the change.

In its request for reconsideration, the employer's representative again asked for a new hearing. In support of its request, the employer's representative attached a copy of a January 10, 2014 e-mail from

an employee of the Department's UI Tax division that confirms that "Barnett Associates has been added as the Power of Attorney (POA)" for Applebees Neighborhood Grill and Bar.<sup>1</sup>

Under OAR 471-041-0145(1) (October 29, 2006), a party may request reconsideration of an EAB decision to correct, among other things, a material error of fact or law. Here, the employer has demonstrated that the Department erred in failing to send the administrative decision at issue to the address of record. OAR 471-030-0039(2) requires that written notice of administrative decisions be personally delivered or mailed "to the parties or their authorized agents at their last address of record." OAR 471-010-0040(5) provides:

Except as specifically provided or prohibited in OAR 471-040-0005 and in this rule, when an individual or employing unit is required by ORS Chapter 657, or the rules adopted pursuant thereto, to file a notice, request, appeal, application, payment, report, tax election, claim, or any other document within a specified time, such individual or employing unit may file such document by personal delivery or by mail to any office of the employment Department in Oregon ...

The record shows that by notifying the Department's UI Tax division that Barnett Associations was the employer's authorized representative on January 10, 2014, the employer changed its address of record with the Department in accordance with OAR 471-010-0040(5). The Department neglected to mail the administrative decision to the correct address of record: on March 6, 2014, it sent the decision to "Thomas & Thorngren for: Applebee's Neighborhood Grill – Bar." Thus, the Department did not send the decision to the authorized agent at its last address of record as required by OAR 471-030-0039(2). As a result of this Department error, the Office of Administrative Hearings sent the hearing notice to Thomas & Thorngren, the authorized agent according to the incorrect Department records.<sup>2</sup> Consequently, the employer's actual representative – Barnett Associates – never received notice of the hearing and failed to appear.

Because the Department made a material error of fact and law, reconsideration is granted. Hearing Decision 14-UI-14974 is reversed and this matter remanded pursuant to ORS 657.275(1) for a new hearing and hearing decision.

**DECISION:** Hearing Decision 14-UI-14974 is set aside, and this matter remanded for further proceedings consistent with this order.

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

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<sup>1</sup> We admit a copy of this e-mail into evidence in this case as EAB Exhibit 1. OAR 471-041-0090(2) (October 29, 2006). A copy of EAB Exhibit 1 is attached to this decision. Any party that objects to the admission of this exhibit may submit its objection to this office in writing, setting forth the basis of the objection in writing, within ten days of the date on which this decision is mailed. Unless such objection is received and sustained, the exhibit will remain part of the record.

<sup>2</sup> OAR 471-040-0015(1) (August 1, 2004) provides that notice of hearing "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."

**DATE of Service: May 21, 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.