

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0840

Reversed and Remanded

PROCEDURAL HISTORY: On November 7, 2013, the Oregon Employment Department (the Department) served two notices of two administrative decisions; one concluding claimant was unavailable for work from November 4, 2012 to September 28, 2013 (decision # 124557), and one concluding claimant voluntarily left work with good cause (decision # 105538). Claimant filed a timely request for hearing on decision # 124557. The employer filed a timely request for hearing on decision # 105538. On January 10, 2014, the Office of Administrative Hearings (OAH) issued two notices of a consolidated, interpreted hearing scheduled for January 22, 2014 at 10:45 a.m. On January 22, 2014, ALJ Vincent issued Hearing Decision 14-UI-17167, dismissing claimant's request for hearing on decision # 124557 for failure to appear. Also on January 22, 2014, OAH issued notice of a rescheduled hearing regarding decision # 105538 for February 4, 2014. On February 4, 2014, ALJ Buckley conducted a hearing at which claimant failed to appear, and on February 5, 2014, issued Hearing Decision 14-UI-09905, concluding claimant voluntarily left work without good cause.

On May 7, 2014, claimant filed an untimely request to reopen Hearing Decision 14-UI-17167. ALJ Kangas reviewed claimant's request to reopen and on May 9, 2014, issued a "Final Order of Dismissal" in Decision 14-UI-17167, denying claimant's request to reopen. On May 14, 2014, claimant filed an application for review of Hearing Decision 14-UI-17167.¹

CONCLUSIONS AND REASONS: The ALJ erred in dismissing claimant's request for a hearing on decision #124557, the decision concerning claimant's availability for work. This matter is remanded for a hearing on the merits of claimant's hearing request.

¹ EAB Exhibits 1 through 4 are admitted into evidence in this case. OAR 471-041-0090(2) (October 29, 2006). Copies of these exhibits are attached to this decision. Any party that objects to our admission of these exhibits may submit such objections 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, these exhibits will remain part of the record.

On January 10, 2014, OAH issued a notice of one hearing scheduled for January 22; the hearing notice states that both issues raised by the hearing requests will be considered at this single hearing -- claimant's availability for work and claimant's work separation. (EAB Exhibit 3). According to the record, however, no hearing was held -- it was postponed "Due to Admin Law Judge Request." (EAB Exhibits 1 and 2).² OAH then re-scheduled the hearing on the employer's request for hearing on decision #105538 (EAB Exhibit 4), but dismissed claimant's request for a hearing on decision #124557. A party cannot be found to have failed to appear at a hearing that was never held. Accordingly, the ALJ erred in dismissing claimant's request for a hearing on decision #124557. Hearing Decision 14-UI-17167 must be reversed, and this matter remanded for a hearing on claimant's request for a hearing on decision #124557.

DECISION: Hearing Decision 14-UI-17167 is reversed, 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.

DATE of Service: May 27, 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.

² EAB Exhibit 2, which is a copy of a computer screen from OAH records summarizing actions in the request for hearing on decision #124557, also notes a "Default" on January 22, 2014. It is unclear what this notation means; an ALJ has no authority to issue a default order in a case of this type.