

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0851

Reversed & Remanded

PROCEDURAL HISTORY: On February 20, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 102149). On March 12, 2014, decision #102149 became final without a request for hearing having been filed. On April 18, 2014, claimant filed an untimely request for a hearing. On May 7, 2014, ALJ Vincent conducted a hearing, and on May 14, 2014, issued Hearing Decision 14-UI-17583, dismissing claimant's hearing request. On May 16, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On February 20, 2014, the Department mailed administrative decision #102149 to claimant. The day after claimant received the decision, he mailed a request for a hearing. (Audio 7:04).

(2) Claimant received no response to his hearing request and on April 7, 2014, called a Department representative to inquire about his hearing request. The representative told claimant that the Department had no record that it had ever received a request for hearing on decision #102149.

(3) On April 18, 2014, claimant sent the following letter by facsimile transmission to the Department:

“I am faxing this letter in for [sic] as a request for a Hearing of Appeal regarding my unemployment insurance denial. I mailed my request in at the beginning of March 2014. I waited for a response from the unemployment office. After a month, without hearing from the office, I called to see if my letter was received. Apparently, it was lost in the mail and never reached the office.”¹

¹ We admit claimant's letter into evidence in this case as EAB Exhibit 1. OAR 471-041-0090(2) (October 29, 2006). A copy of exhibit 1 is attached to this decision. Any party that objects to our admission of this exhibit may submit such 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 an objection is received and sustained, the exhibit will remain part of the record.

CONCLUSIONS AND REASONS: The ALJ erred in dismissing claimant's request for a hearing on decision #102149. The matter is remanded for a hearing on the merits of claimant's hearing request.

Under ORS 657.269, a request for hearing on an administrative decision must be filed within 20 days of the date on which the decision is mailed to a claimant's last known address. At hearing, claimant provided specific, detailed testimony that he mailed a request for hearing on decision #102149 the day after he received the decision. Approximately one month after he submitted his hearing request, claimant called the Department to ask about the status of his request. Claimant would have no reason to check on his hearing request unless he was certain that he had submitted one. Thus, the persuasive evidence in the record demonstrates that claimant timely submitted his hearing request in accordance with ORS 657.269.

DECISION: Hearing Decision 14-UI-17583 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and J. S. Cromwell;
Tony Corcoran, not participating.

DATE of Service: June 12, 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.