

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0049

Reversed & Remanded

PROCEDURAL HISTORY: On November 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 140135). The Department mailed decision # 140135 to the employer at the following address: 700 Sleater Kinney Road SE, # B170, Lacey WA 98503. Claimant filed a timely request for hearing.

The post office returned the decision mailed to the employer as undeliverable. A Department representative investigated the matter, and learned that the employer's authorized agent was now Laborworks at the following address: Box 173860, Denver CO 80217. The Department changed the employer's address of record to the Denver address,¹ and on December 19, 2014, issued amended decision #140135, which was sent to the employer's authorized agent at the Denver address. Also on December 19, 2014, at the request of the Office of Administrative Hearings, the Department sent OAH by fax a copy of the amended decision.²

On December 19, 2014, OAH sent notice of a hearing scheduled for December 29, 2014 to the employer at the Lacey, Washington address.

¹ We take official notice of these facts, which are contained in the Department's records. OAR 471-041-0090(3) (October 29, 2006). Any party that objects to our taking notice of these facts must submit its objections to this office in writing, setting forth the basis of the objection, within 10 days of the date on which this decision is mailed. Unless such an objection is received, the noticed facts will remain part of the record.

² A copy of the Department's December 19 amended decision and the fax cover sheet sending it to OAH have been marked as EAB Exhibit 1. A copy of EAB Exhibit 1 is included with this decision. Any party that objects to the admission of EAB Exhibit 1 must submit its objections to this office in writing, setting forth the basis of the objection, within 10 days of the date on which this decision is mailed. Unless such an objection is received, EAB Exhibit 1 will remain part of the record.

On December 29, 2014, ALJ conducted a hearing in which the employer did not participate, and on January 2, 2015 issued Hearing Decision 2015-UI-31231, concluding that claimant voluntarily left work with good cause. Hearing Decision 2015-UI-31231 was sent to Laborworks at the Denver, Colorado address.

On January 21, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer's representative asked for a new hearing, asserting that it never received notice of the December 29, 2014 hearing. OAR 471-040-0051(1) (August 1, 20014) 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.

Under this rule, a party that fails to appear for a hearing has been denied due process if notice of the hearing was not mailed to the absent party at the party's last known address as shown by the record of the Director. If a decision is issued despite the lack of notice, the absent party may challenge the decision on constitutional grounds.

When the original administrative decision issued by the Department on November 26, 2014 was returned as undeliverable, a Department representative investigated the matter. The representative discovered that the employer was represented by an authorized agent; changed the Department records to show the new, correct address; issued an amended decision to the employer's agent at the correct address; and notified OAH of the new address. OAH received notice of the correct address for the employer's authorized agent on December 19, the same day it sent notice of the hearing to the employer at the old, incorrect address. OAH failed to re-send the hearing notice to the correct address for the employer's agent, however.

Because OAH neglected to mail the hearing notice to the last known address of the employer's authorized agent as shown by the Department records, the employer had no actual notice of the hearing and was denied due process. Hearing Decision 2015-UI-31231 is reversed and this matter remanded under ORS 657.275(1) for a new hearing and hearing decision.

DECISION: Hearing Decision 15-UI-31231 is set aside, and this matter remanded for further proceedings consistent with this order.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 15-UI-31231 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause the matter to return to EAB.

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

DATE of Service: January 30, 2015

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 court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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