

## EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0052

*Hearing Decision 15-UI-31670 Reversed*  
*Hearing Decision 15-UI-31922 Reversed & Remanded*

**PROCEDURAL HISTORY:** On November 24, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work from Luis Taqueria, Inc. without good cause (decision # 143054). On December 8, 2014, claimant filed a request for hearing on that decision by fax to the Office of Administrative Hearings (OAH). On December 16, 2014, claimant mailed a second copy of her request for hearing on the same decision. On December 18, 2014, claimant faxed a third copy of her request for hearing to the Department. On December 30, 2014, the Department sent the third copy to OAH.

On December 31, 2014, OAH mailed notice of a hearing scheduled for January 15, 2015. On January 12, 2015, ALJ Kangas issued Hearing Decision 15-UI-31670 to claimant, dismissing her request for hearing on decision # 143054 as untimely, subject to claimant's right to renew the request by responding to a Spanish-language appellant questionnaire within 14 days of the date the hearing decision was mailed.<sup>1</sup>

On January 15, 2015, claimant did not appear for the hearing. ALJ Shoemaker issued Hearing Decision 15-UI-31922, re-dismissing claimant's request for hearing for failure to appear. On January 21, 2015, claimant filed a timely application for review of Hearing Decisions 15-UI-31670 and 15-UI-31922 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-31922 and 15-UI-31670. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 15-EAB-0050 and 15-EAB-0052).

<sup>1</sup> It appears that claimant's primary language is likely a Guatemalan dialect called "K'anjobal," not Spanish.

**FINDINGS OF FACT:** Items sent through the United States Postal Service's first class mail service typically take between one and three business days to arrive at the destination address.<sup>2</sup> An item mailed from Salem to claimant's address in Woodburn on January 12, 2015 would be delivered on or before January 15, 2015.

**CONCLUSIONS AND REASONS:** Hearing Decisions 15-UI-31670 and 15-UI-31922 should be reversed as unsupported by the record. Claimant is entitled to a hearing on the merits of decision # 143054.

Claimant filed a timely request for hearing on decision # 143054. Claimant is entitled to have a hearing on the merits of that decision.

Hearing Decision 15-UI-31670 purported to dismiss claimant's request for hearing as untimely. However, the record shows that claimant filed a timely request for hearing in this matter by fax to OAH on December 8, 2014.<sup>3</sup> Claimant's request for hearing in this matter is not subject to dismissal as untimely. Therefore, Hearing Decision 15-UI-31670 is reversed.

Hearing Decision 15-UI-31922 purported to dismiss claimant's request for hearing on decision # 143054 because she failed to appear for a scheduled hearing. However, the record shows that, at the time that hearing was convened, OAH had already notified claimant that her hearing request had been dismissed. Claimant cannot be considered to have failed to appear for the hearing after being notified that her request for that hearing was dismissed, nor should she be penalized for failing to understand what was happening with her request because of the clerical or administrative errors that were made when processing copies of her request for hearing. Hearing Decision 15-UI-31922 is, therefore, reversed, and this matter remanded to OAH to schedule a hearing on the merits of decision # 143054 based on claimant's timely request for hearing.

**DECISION:** Hearing Decision 15-UI-31670 is reversed. Hearing Decision 15-UI-31922 is set aside, and this matter remanded for further proceedings consistent with this order. *Decisión de la Audiencia 15-UI-31922 de la audiencia, y esta materia se remite para otros procedimientos constantes con esta orden.*

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

**DATE of Service:** January 23, 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

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<sup>2</sup> We take notice of this generally cognizable fact, available through the United States Postal Service website at <https://www.usps.com>. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

<sup>3</sup> It appears that, through a clerical or administrative error, OAH failed to connect the copy of claimant's request for hearing received December 30<sup>th</sup> with the original request claimant had already filed and for which a hearing was already scheduled.

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](http://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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*NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros, (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en [court.oregon.gov](http://court.oregon.gov). En este sitio web, haga clic en “Help” para acceso a información en español.*

**Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente.** Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.