

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0129

Reversed & Remanded

PROCEDURAL HISTORY: On December 15, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 72353). The employer filed a timely request for hearing. On February 6, 2014, ALJ Shoemake conducted a hearing in which the claimant did not participate, and issued Hearing Decision 15-UI-33117, concluding that claimant voluntarily left work without good cause. On February 10, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On December 20, 2014, the Department mailed the administrative decision at issue, #72353, to the following address of record for claimant: 2 Jefferson Pkwy, Apt. H11, Lake Oswego, Oregon 97035-7898.

(2) On January 10, 2015, claimant notified the Department that her address had changed to the following: 2211 SW 1st Ave, #203, Portland, Oregon 97201-5066.¹

(3) On January 22, 2015, the Office of Administrative Hearings (OAH) mailed notice of the hearing scheduled for February 6, 2015 to claimant at the Lake Oswego address.

CONCLUSION AND REASONS: Claimant had no actual notice of the hearing.

In her application for review, claimant asserted that she had no notice of the February 6, 2015 hearing. OAR 471-040-0015(1) (August 1, 2014), provides:

¹ In accordance with OAR 471-041-0090(3) (October 29, 2006), we take notice of this fact, which is contained in Department records. Any party that objects to our doing so must submit its objection to EAB in writing, setting forth the basis for the objection, within 10 days of the date on which this decision is mailed. Unless such an objection is received, the noticed fact will remain in the record.

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.

When a party fails to appear for a hearing, it is necessary to determine if the notice of hearing was mailed to the absent party at his or her last known address as shown by the record of the Director. If not, the absent party has been denied due process, and any decision that resulted from the hearing may be challenged by the absent party on constitutional grounds.

Claimant notified the Department of her new Portland address on January 10, 2015. OAH, however, mailed notice of the hearing her old address in Lake Oswego. Because OAH failed to mail the notice of hearing to claimant as her last known address as shown by the record of the Director, claimant had no actual notice of the hearing and was, therefore, denied due process. Hearing Decision 15-UI-33117 is reversed, and under ORS 657.275(1), this matter is remanded for a new hearing and hearing decision.

DECISION: Hearing Decision 15-UI-33117 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: February 19, 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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