

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0170

Affirmed

PROCEDURAL HISTORY: On January 15, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work (decision # 72447). Claimant filed a timely request for hearing. On January 28, 2015, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for February 12, 2015 at 1:30 p.m. in case # 2015-UI-28199. The notice of hearing stated that the issue to be considered at hearing was whether claimant was unemployed, registered for work, able to work, available for work, and actively seeking and unable to obtain suitable work. On February 12, 2015, the Department received a voicemail from claimant requesting a withdrawal of his request for hearing in case # 2015-UI-28199¹. On February 12, 2015, ALJ S. Lee issued Hearing Decision 15-UI-33463, dismissing claimant's request for hearing in case #2015-UI-28199 under ORS 657.270 and OAR 471-040-0035 based on claimant's request. On February 19, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 15-UI-33463 is affirmed. Administrative decision # 72447 remains undisturbed.

¹ Claimant provided no explanation why he withdrew his request for hearing on administrative decision # 72447, or why, seven days later, he filed an application for review with EAB of Hearing Decision 15-UI-3346, the decision that accepted the withdrawal of his request for hearing on decision #72447. We note, however, that on December 2, 2014, the Department issued administrative decision #143756, which found that the employer discharged claimant for misconduct. Claimant filed a timely request for hearing on decision #143756. On January 15, 2015, ALJ Wipperman conducted a hearing and issued Hearing Decision 15-UI-31876, affirming the decision # 153756. On February 4, 2015, Hearing Decision 15-UI-31876 became final without an application for review with the EAB having been filed. If claimant wishes to file a late application for review on Hearing Decision 15-UI-31876, the filing period may be extended a reasonable time only upon a showing of good cause as provided by ORS 657.875. OAR 471-041-0070 provides that claimant must include with the application for review a written statement describing the circumstances that prevented a timely filing.

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

DATE of Service: February 20, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.