

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0301**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On February 6, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 100122) concluding claimant was not available for work for the period of January 18 through January 31, 2015 (weeks 3-15 and 4-15). On February 9, 2015, the Department served notice of an administrative decision (decision # 85709) concluding claimant was not eligible for Training Unemployment Insurance (TUI) benefits. On February 23, 2015 claimant filed timely requests for hearing on both decisions. On March 4, 2015, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for March 18, 2015. On March 11, 2015, OAH served notice of a “Memo to File / Telephone Record” indicating claimant requested withdrawal of his requests for hearing on decisions # 100122 and # 85709.<sup>1</sup> On March 11, 2015, ALJ Murdock issued Hearing Decisions 15-UI-34971 and 15-UI-34967, dismissing claimant’s requests for hearing based on his alleged withdrawal by phone. On March 16, 2015, claimant filed applications for review with the Employment Appeals Board (EAB). On his application for review of Hearing Decision 15-UI-34971, claimant asserted: “I never withdrew the request for a hearing. I just find a job that conflicted with the hours. I couldn’t keep the hearing because I am working and my hours are conflicting with the hearing times.”

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-34971 and 15-UI-34967. For case-tracking purposes, this decision is being issued in duplicate (Decisions 2015-EAB-0300 and 2015-EAB-0301).

**CONCLUSIONS AND REASONS:** Hearing Decisions 15-UI-34971 and 15-UI-34967 should be reversed, and these matters remanded for additional information. In his application for review with EAB, claimant denied withdrawing his request for hearing. The only evidence of claimant’s withdrawal in the record is the “Memo to File / Telephone Record”, which is, at best, hearsay information supplied by OAH. Claimant’s direct assertion that he did not intend to withdraw his requests for hearing in these

<sup>1</sup> The “Memo to File / Telephone Record” is 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 ten 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.

matters should be given more weight than the OAH memo. These decisions are remanded to OAH to schedule a hearing on these matters.

**DECISION:** Hearing Decisions 15-UI-34971 and 15-UI-34967 are set aside, and these matters remanded for further proceedings consistent with this order.

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

**DATE of Service:** March 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 Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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