

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0561

Hearing Decision 15-UI-37536 Affirmed - Late Request for Hearing Dismissed
Hearing Decision 15-UI-37668 Reversed – Claimant Entitled to Hearing on Merits of Decision # 105230

PROCEDURAL HISTORY: On January 21, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work for the periods of December 7 through December 13, 2014 (week 50-14) and December 28, 2014 through January 10, 2015 (weeks 53-14 and 1-15) (decision # 105004). On January 22, 2015, the Department served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 105230). On January 22, 2015, claimant filed a telephone request for hearing on decision # 105230 with the Department. On February 10, 2015, decision # 105004 became final without a request for hearing having been filed. On March 3, 2015, claimant filed a late request for hearing on decision # 105004, and re-requested a hearing on decision # 105230.

On March 11, 2015, ALJ Kangas issued Hearing Decisions 15-UI-34948 and 15-UI-34951, dismissing both of claimant's requests for hearing as untimely, subject to claimant's "right to renew" the requests by submitting responses to the "Appellant Questionnaires" attached to the hearing decisions within 14 days of the date the decision was mailed.¹ On March 23, 2015, the Office of Administrative Hearings (OAH) received claimant's response. On April 2, 2015, OAH issued a "Cancellation of Hearing Decision" for Hearing Decision 15-UI-34948. On April 7, 2015, OAH issued a "Cancellation of Hearing Decision" for Hearing Decision 15-UI-34951. On April 24, 2015 at 9:30 a.m., ALJ Shoemake conducted a hearing and, on April 27, 2015 issued Hearing Decision 15-UI-37536 re-dismissing claimant's late request for hearing on decision # 105004. On April 24, 2015 at 10:45 a.m., ALJ Clink conducted a hearing and, on April 29, 2015 issued Hearing Decision 15-UI-37668 re-dismissing claimant's late request for hearing on decision # 105230. On May 7, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 15-UI-37536 and 15-UI-37668. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2015-EAB-0560 and 2015-EAB-0561).

¹ Hearing Decisions 15-UI-34948 and 15-UI-34951.

CONCLUSIONS AND REASONS: Hearing Decision 15-UI-37536 is affirmed. Hearing Decision 15-UI-37668 is reversed. Claimant filed a timely request for hearing on decision # 105230, and he is entitled to a hearing on the merits of his work separation from Georges Shop & Rock, Inc.

As to Hearing Decision 15-UI-37536, concluding claimant's late request for hearing on decision # 105004 should be dismissed, EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

In Hearing Decision 15-UI-37668, the ALJ found as fact that claimant filed a telephone request for hearing on decision # 105230 on March 3, 2015, and, because he missed the February 11, 2015 filing deadline, the ALJ concluded that claimant's request for hearing was filed late.² However, the record on review shows that claimant filed a timely request for hearing on that decision on January 22, 2015.³ Because claimant filed a timely request for hearing in this matter, claimant is entitled to a hearing on the merits of decision # 105230.

DECISION: Hearing Decision 15-UI-37536 is affirmed. Hearing Decision 15-UI-37668 is set aside. OAH must schedule a hearing on the merits of decision # 105230.

On case number 2015-UI-30386: Susan Rossiter and J. S. Cromwell;
Tony Corcoran, not participating

On case number 2015-UI-30383: Tony Corcoran and J. S. Cromwell;
Susan Rossiter, not participating.

DATE of Service: May 29, 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. 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.

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.

² Hearing Decision 15-UI-37668 at 1-2.

³ Claimant's timely request for hearing is admitted into evidence as EAB Exhibit 1 to complete the record. Any party that objects to our admission of that exhibit into evidence 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 at EAB Exhibit 1.