

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0812

Reversed & Remanded

PROCEDURAL HISTORY: On May 28, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was discharged, but not for misconduct (decision # 131108). The employer filed a timely request for hearing. On June 15, 2015, the Office of Administrative Hearings mailed notice of a hearing scheduled for June 26, 2015 at 8:15 a.m. On June 26, 2015, ALJ Vincent issued Hearing Decision 15-UI-40762, concluding that the employer had withdrawn its hearing request and dismissing the request for that reason. On July 7, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 15-UI-50762 is reversed as unsupported by the record, and this matter remanded to the Office of Administrative Hearings.

In Hearing Decision 15-UI-40762, the ALJ found as fact that the employer withdrew its request for hearing, and, concluding that the withdrawal should be allowed, the ALJ dismissed the employer's request.¹ However, there is nothing in the record documenting the employer's request, nor does the ALJ's decision specify the basis of his finding or conclusion that the employer withdrew its request. Furthermore, in the employer's argument, the employer's representative wrote:

We wish to have this case reopened. The employer did not receive the notice of hearing until after it had been scheduled. We cannot be held responsible for unforeseen [*sic*] delays from the post office.

There is no evidence in this record tending to show that the employer withdrew its request for hearing, so the ALJ's finding is unsupported by the evidence, the hearing decision is reversed, and this matter remanded for further proceedings.

DECISION: Hearing Decision 15-UI-40762 is set aside, and this matter remanded for further proceedings consistent with this order.

¹ Hearing Decision 15-UI-40762 at 1.

J. S. Cromwell and D. P. Hettle, *pro tempore*;
Susan Rossiter, not participating.

DATE of Service: July 16, 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.