

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0921

Reversed & Remanded

PROCEDURAL HISTORY: On June 17, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 125309). The Department mailed the administrative decision to the employer's representative at the following address: Employers Unity LLC, Asante, PO Box 173836, Denver, CO 80217-3836. Claimant filed a timely request for hearing. On July 13, 2015, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for July 27, 2015 at 9:30 p.m. The notice of hearing was sent to the following address for the employer: Asante, 2825 E Barnett Rd, Medford OR 97504. On July 27, 2015, ALJ Triana conducted a hearing in which the employer did not participate, and issued Hearing Decision 15-UI-42052, reversing the administrative decision and concluding that the employer discharged claimant, but not for misconduct. On August 17, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

In its application for review, the employer's representative asked that the hearing be reopened. In support of its request, the representative states that it did not receive notice of the hearing until 2 p.m. on July 27, 2015. OAR 471-040-0015(1 (August 1, 2004) provides that to provide parties with an opportunity for a fair hearing, notice of the hearing will be personally delivered or mailed at least five days in advance of the hearing "to the parties or their authorized agents at their last known address as shown by the record of the Director." The Department mailed notice of the hearing to the employer's representative at its address of record in Denver, Colorado. OAH mailed notice of the hearing to the employer's address in Medford, Oregon. Because OAH failed to mail the hearing notice to the employer's authorized agent at its last known address "as shown by the record of the Director," the employer had no actual notice of the hearing. The employer was therefore denied an opportunity for a

fair hearing, and was not afforded due process of law. Hearing Decision 15-UI-42052 must be reversed and this matter remanded under ORS 657.275(1) for a new hearing and hearing decision.

DECISION: Hearing Decision 15-UI-42052 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and J. S. Cromwell

DATE of Service: September 21, 2015

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 15-UI-42052 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

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.

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