

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0922

Reversed & Remanded

PROCEDURAL HISTORY: On June 12, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was overpaid \$183.00 (decision # 193978). The employer filed a timely request for hearing. On July 23, 2015, ALJ Seideman issued Hearing Decision 15-UI-41904, concluding the employer withdrew its request for hearing, and dismissing the request. On July 29, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 15-UI-41904 is not supported by evidence in the record and must be remanded.

OAR 471-040-0030(2) provides that the administrative law judge's decision shall be based upon the evidence in the hearing record, and that any findings by the administrative law judge shall be based upon reliable, probative, and substantial evidence. In Hearing Decision 15-UI-41904, the ALJ found as fact that the employer withdrew its request for hearing, and, on the basis of that finding, dismissed the employer's hearing request. However, there is no record evidence tending to suggest, much less establish by a preponderance of the evidence, that the employer withdrew its request for hearing, or that the ALJ's decision was based on reliable, probative, and substantial evidence of such. Because the ALJ failed to ensure development of a record sufficient to support any finding on the issue of the employer's withdrawal, Hearing Decision 15-UI-41904 is reversed, and this matter remanded for development of the record.

NOTE: The failure of any party to appear at any proceedings scheduled on remand will not reinstate Hearing Decision 15-UI-41904 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.

DECISION: Hearing Decision 15-UI-41904 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: August 4, 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.

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