

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1105-R

Reconsideration Granted
Appeals Board Decision 2015-EAB-1105 Vacated

PROCEDURAL HISTORY: On July 21, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 100049). On August 10, 2015, decision # 100049 became final without claimant having filed a request for hearing. On August 11, 2015, claimant filed a late request for hearing.¹ On September 1, 2015, ALJ Kangas issued Hearing Decision 15-UI-43784, dismissing claimant's late request for hearing subject to his right to renew the request by submitting a written statement to the Office of Administrative Hearings (OAH) within 14 days showing that he had "good cause" for filing a late request for hearing and that he filed the late request within seven days after those circumstances ceased. On September 15, 2015, claimant filed an application for review with the Employment Appeals Board (EAB). Also on September 15, 2015, claimant timely returned the appellant questionnaire to the Office of Administrative Hearings (OAH).

On September 18, 2015, EAB issued Appeals Board Decision 2015-EAB-1105 in which it affirmed Hearing Decision 15-UI-43784. At the time this decision was issued, EAB was unaware that claimant had timely submitted his appellant questionnaire to the OAH. Subsequent to issuing this decision, EAB was made aware of claimant's timely submission of the appellant questionnaire to OAH.²

¹ The filing date of a request for hearing sent by mail is the postmark date affixed to the envelope in which it was mailed. OAR 471-040-0005(4)(b). Here, the postmark date is August 11, 2015, making claimant's request late.

² The appellant questionnaire claimant submitted to OAH on September 15, 2015 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.

EAB will exercise its discretion under ORS 657.290(3) to reconsider this case. On reconsideration, we conclude that we made an error of law in affirming Hearing Decision 15-UI-43784. Because claimant timely responded to the appellant questionnaire, this matter was pending before the OAH and was therefore not ripe for EAB review. EAB therefore had no jurisdiction over claimant's application for review. For this reason, it is appropriate to vacate Appeals Board Decision 2015-EAB-1105 to allow OAH to continue processing claimant's hearing request.

DECISION: Reconsideration is granted. Appeals Board Decision 2015-EAB-1105 is **vacated**.

NOTE: EAB will take no further action on this matter. This matter will be returned to EAB only when and if a party files an application for review of any subsequent decision issued by the OAH.

Susan Rossiter and J. S. Cromwell

DATE of Service: October 1, 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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