

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1376**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On September 14, 2015, the Oregon Employment Department (the Department) served notice of two administrative decisions: decision # 100316 concluded that claimant was not available for work from March 1 through September 5, 2015 (weeks 9-15 through 35-15), and decision # 102350 concluded that claimant was not available for work from August 2 through August 8, 2015 (week 31-15).<sup>1</sup> On September 22, 2015, claimant filed a request for hearing on decision # 100316. On October 5, 2015, decision # 102350 became final without a request for hearing having been filed. On November 4, 2015, ALJ Seideman issued Hearing Decision 15-UI-47088, concluding that claimant had withdrawn her request for hearing on decision # 100316, and dismissing her hearing request. On November 23, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSIONS AND REASONS:** Hearing Decision 15-UI-47088 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-47088, the ALJ found as fact that claimant withdrew her request for hearing, and, on the basis of that finding, dismissed the employer's hearing request. The only information in the record regarding claimant's supposed withdrawal is a "Memo to File / Telephone Record" dated November 4, 2015, apparently recording a conversation claimant had with an Office of Administrative Hearings (OAH) employee; this "Memo to File" is not marked as an exhibit. The "Memo to File" states that the claimant does not wish to go forward with the hearing and requests a withdrawal. The "Memo to File" contains no information

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<sup>1</sup> We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit its objection to this office, explaining in writing the basis for its objection, within ten days of the date on which this decision was mailed. OAR 471-041-0090(3) (October 29, 3006). Unless such an objection is received and sustained, the noticed fact will remain part of the record.

regarding what any discussion the OAH employee may have had with claimant on November 4 regarding the hearing request she apparently wanted to withdraw. As a result, the record lacks evidence tending to suggest, much less establish by a preponderance of evidence, that claimant intended to withdraw her request for a hearing on decision # 100316 concerning her availability for work from March 1 through September 5, 2015. We note that in her application for review, claimant stated that she wanted to “pay back the \$128 weekly amount [sic],” unemployment benefits she apparently received for the week of August 2 through August 8, 2015, and that she “cancelled” that decision on September 14, 2015. Claimant’s application for review therefore indicates considerable confusion, and suggests that she may have mistakenly decided to withdraw her request for hearing on decision # 102350, and believed that she had done so when she spoke with the OAH employee on November 4. Because the ALJ failed to ensure development of a record sufficient to support any finding on the issue of claimant’s withdrawal of a hearing request on decision # 100316, Hearing Decision 15-UI-47088 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-47088 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-477088 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and J. S. Cromwell

**DATE of Service: November 30, 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](http://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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