

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1384

Reversed and Remanded

PROCEDURAL HISTORY: On September 30, 2015, the Oregon Employment (the Department) served notice of an administrative decision concluding that the employer discharged claimant, but not for misconduct (decision # 102845). The employer filed a timely request for hearing. On October 20, 2015, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for November 3, 2015. The notice was mailed to claimant at the following address: 620 N. Winchell, Portland, Oregon 97217-1053. On November 1, 2015, claimant submitted the following change of address to the Department: 520 NE Cully Blvd., Portland, Oregon 97218.¹ On November 3, 2015, ALJ M. Davis conducted a hearing in which claimant did not participate, and on November 4, 2015, issued Hearing Decision 15-UI-47123, concluding that the employer discharged claimant for misconduct. The hearing decision was sent to claimant at the N. Winchell address. On November 21, 2015, claimant filed an application for review with the Employment Appeals Board (EAB). On her application for review, claimant stated that her address had changed to 520 N. Cully Blvd., and noted that she had “already notified office of change.”

Also in her application for review, claimant complained that she never received notice of the November 3, 2015 hearing. OAR 471-040-0015(1)(August 1, 2004) provides, in relevant part, that to afford “all parties a reasonable opportunity for a fair hearing,” notice of the hearing will be mailed at least five days in advance of the hearing “to parties or their authorized agents at their last known address as shown by the record of the Director.” Where, as here, a party fails to appear for a hearing, it is first necessary to determine whether the party was afforded due process of law, i.e., whether the hearing notice was mailed to the absent party at the party’s last known address as shown by the record of the Director. Here,

¹ 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.

after the OAH mailed notice of the hearing to the claimant at the Winchell address, claimant changed her address with the Department. Whether OAH was not notified of claimant's new address or did not note the change of address, the result was that it did not mail notice of the hearing to claimant at the last known address as shown by the record of the Director or otherwise notify her of the hearing. Because of the OAH's failure to comply with the due process requirements of OAR 471-040-0015(1), claimant never received actual notice of the hearing. Hearing Decision 15-UI-47123 must therefore be reversed, and this matter must be remanded pursuant to ORS 657.275(1) for a new hearing and hearing decision.

DECISION: Hearing Decision 15-UI-47123 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. 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.