

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0136

Reversed & Remanded

PROCEDURAL HISTORY: On November 30, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant committed a disqualifying act (decision # 154441). Claimant filed a timely request for hearing. On December 29, 2015, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for January 12, 2016. On January 12, 2016, ALJ Seideman conducted a hearing, at which the employer failed to appear, and issued Hearing Decision 16-UI-50917, concluding that claimant did not commit a disqualifying act. On February 1, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: The employer authorized Equifax Workforce Solutions, P.O. Box 283, St. Louis MO to represent it in regard to claimant's request for hearing. OAH mailed the notice of hearing to the Equifax Workforce Solutions, PO Box 173860 in Denver, Colorado.

CONCLUSIONS AND REASONS: OAH failed to provide the employer with notice of the October 29th hearing as required by OAR 471-040-0015(1).

OAR 471-040-0015(1)(Notice of Hearing)(August 1, 2004) provides:

To afford all parties a reasonable opportunity for a fair hearing, notice of hearing setting forth the time, date, place, and issue(s) in general shall be personally delivered or 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.

When a party fails to appear for a hearing, the first issue is whether the absent party was afforded due process of law, i.e., whether the notice of hearing was mailed to the absent party at his or her last known address as shown by the record of the Director. If not, a continuance is in order. If, despite the lack of notice, a decision is issued, the decision may be challenged by the absent party on constitutional grounds. The party need not request reopening or satisfy the requirements of OAR 471-041-0090.

Here, OAH failed to mail the notice of hearing to the last known address of the employer's representative, its authorized agent, as shown by Department records. The employer, therefore, lacked notice of the scheduled hearing. Because the employer was deprived of reasonable opportunity for a fair hearing, Hearing Decision 16-UI-50917 must be reversed and this matter remanded for further proceedings.

DECISION: Hearing Decision 16-UI-50917 is set aside, and this matter remanded for further proceedings consistent with this order.¹

Susan Rossiter and J. S. Cromwell

DATE of Service: February 12, 2016

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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¹ **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-50917 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.