

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0187

Reversed & Remanded

PROCEDURAL HISTORY: On January 15, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 111050). Claimant filed a timely request for hearing. On February 10, 2016, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for February 24, 2016. On February 12, 2016, ALJ Vincent issued Hearing Decision 16-UI-52931, dismissing claimant's request for hearing. On February 19, 2016, claimant filed an application for review of Hearing Decision 16-UI-52931 with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 16-UI-52931 is reversed, and this matter remanded to OAH for further proceedings.

ORS 657.270(7)(a)(A) and OAR 471-040-0035 (August 1, 2004) provide that an ALJ may dismiss a request for hearing if the request is withdrawn by the requesting party. In the present case, the ALJ dismissed claimant's request for hearing based on a finding that she "withdrew the request for hearing."¹ However, the record in this case does not support that finding. The only record document addressing the issue is a February 11, 2016 document written by an OAH employee entitled "Memo To File / Telephone Record," stating "From: [claimant]," and "Re: Withdrawal Granted." We cannot discern from that document whether claimant, in fact, requested to withdraw her request for hearing, or, for example, asked to reschedule her hearing, which was misinterpreted as a request to withdraw. We therefore cannot find on this record that claimant requested to withdraw her request for hearing, or conclude that her request for hearing is dismissed. Hearing Decision 16-UI-52931 therefore is reversed as unsupported by the record, and this matter remanded to OAH for further proceedings.

DECISION: Hearing Decision 16-UI-52931 is set aside, and this matter remanded for further proceedings consistent with this order.

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

¹ Hearing Decision 16-UI-52931 at 1.

DATE of Service: February 22, 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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