

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0258-R

Affirmed
Request for Hearing Dismissed

PROCEDURAL HISTORY: On December 23, 2015, the Oregon Employment Department (the Department) served notice of two administrative decisions: decision # 111440 concluded that claimant voluntarily left work without good cause, and decision # 112216 denied claimant's request to backdate an initial claim for benefits to November 28, 2015. Claimant filed timely requests for hearing. On February 26, 2016, ALJ Frank dismissed claimant's request for hearing on decision # 112216 on the grounds that claimant had withdrawn his request. On March 5, 2016, claimant filed an application for review of Hearing Decision 16-UI-53876 with the Employment Appeals Board (EAB). On April 6, 2016, EAB issued Appeals Board Decision 2016-EAB-0258, reversing Hearing Decision 16-UI-53876 as unsupported by a complete record, and remanding the matter to the Office of Administrative Hearings (OAH) for further proceedings. On April 7, 2016, OAH provided a completed record and returned this decision to EAB. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

We considered claimant's written argument in reaching this decision.

Evidentiary Matter: OAH's April 7 submission consisted of a "Memo to File/Telephone Record" of a conversation an OAH employee had with claimant regarding the withdrawal of his hearing request.¹ This document 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.

FINDINGS OF FACT: (1) On January 4, 2016, claimant filed a timely request for hearing on the administrative decision (# 112216) that found he was not entitled to back date an initial claim for unemployment benefits to November 28, 2015. OAH scheduled a hearing for March 8, 2016.

¹ The "Memo to File/Telephone Record" that OAH submitted on April 7, 2016 is dated April 6, 2016. This date appears to be erroneous and the document should have a date on or before February 26, 2016, the date on which the ALJ dismissed claimant's hearing request because claimant had withdrawn it.

(2) Sometime prior to February 26, 2016, claimant contacted the OAH by phone and withdrew his request for hearing on decision # 112216.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant's request for hearing on decision # 112216 should be dismissed.

Claimant's intent to withdraw his hearing request on decision # 112216 is demonstrated by EAB Exhibit 1, in which an OAH employee documented a telephone conversation in which claimant told her that he wanted to withdraw his hearing request. In addition, claimant indicates in his written argument that after he withdrew his hearing request, he regretted his decision and attempted to re-submit his request and obtain a hearing. While it is unfortunate that the applicable laws and rules do not permit a party to rescind withdrawal of a hearing request, the preponderance of evidence in the record demonstrates that claimant intended to and did withdraw his request for a hearing on decision # 112216.

DECISION: Hearing Decision 16-UI-53876 is affirmed.

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

DATE of Service: April 11, 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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