

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0353

Reversed & Remanded

PROCEDURAL HISTORY: On February 29, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 113755) concluding that claimant was not available for all suitable work from January 10 through February 20, 2016 (weeks 02-16 through 07-16). Claimant filed a timely request hearing; in her hearing request, claimant stated that she wanted a Russian interpreter for the hearing. On March 22, 2016, ALJ Frank issued Hearing Decision 16-UI-55518, dismissing claimant's hearing request. On March 29, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 15-UI-55518 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-55518, the ALJ found as fact that claimant withdrew her request for hearing, and, on the basis of that finding, claimant's hearing request. The only information in the record regarding claimant's supposed withdrawal is a "Memo to File / Telephone Record" dated March 21, 2016, 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, in relevant part: "Message: clmt withdrawal." The "Memo to File" contains no information regarding what discussion the OAH employee may have had with claimant on March 21 regarding the hearing request she supposedly wanted to withdraw. We also note that there is no indication that the OAH employee used an interpreter when she spoke to claimant on March 21, suggesting the possibility that linguistic difficulties may have prevented the employee from fully understanding what claimant wanted to do. For these reasons, the record lacks evidence tending to establish by a preponderance of evidence that claimant intended to withdraw her request for hearing.

Because the ALJ failed to ensure development of a record sufficient to support a finding that claimant withdrew her hearing request, Hearing Decision 15-UI-55518 is reversed, and this matter remanded for further 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 16-UI-55518 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.

DATE of Service: April 1, 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.

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.