

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0477**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On March 16, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not eligible to receive benefits through the Self Employment Assistance Program (SEA) (decision # 124450). Claimant filed a timely request for hearing. On April 18, 2016, ALJ Seideman conducted a hearing, and issued Hearing Decision 16-UI-57376, affirming the Department's decision, subject to reconsideration after claimant participated in a coaching session held after the hearing. On April 25, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument which stated that, as of April 22, 2016, the coaching session which the Department's representative at hearing agreed would be held on April 19, 2016 had not taken place. EAB considered claimant's argument since the facts it contained were relevant to our disposition of this matter, and could not have reasonably have been known to claimant at the time of the hearing. *See* OAR 471-041-0090 (October 29, 2006).

**CONCLUSIONS AND REASONS:** Hearing Decision 16-UI-57376 is reversed and this matter is remanded for further proceedings in accordance with this decision.

Claimant applied to participate in the SEA program. Claimant's application was denied because his score on the answers he supplied to the Department's feasibility study did not meet the minimum score required to receive benefits through the program. *See* OAR 471-020-0025(5)(c) (July 17, 2005); Audio at ~16:20, ~16:38. At hearing, the Department's witness Vincent Peralta, who was not the representative who denied claimant's application, stated that it was his practice to schedule "coaching sessions" with otherwise eligible applicants for the SEA program who initially submitted feasibility studies that did not meet the Department's minimum score to assist them in revising their submissions in manner that qualified them for participation in the SEA program. Audio at ~17:49, ~18:07, ~19:30. Mr. Peralta testified that he had been very successful in assisting applicants whose initial answers to the feasibility study were inadequate to achieve scores adequate to qualify them SEA program. As of the time of the hearing, no Department representative had held such a "coaching session" with claimant, and Mr. Peralta exchanged phone numbers with claimant during the hearing and agreed to call claimant at

9:00 a.m. on April 19, 2015 to conduct such a coaching session and to himself personally re-score claimant's responses to the feasibility study if claimant chose to revise them. Audio at ~18:58, ~20:54, ~21:52, ~22:48, ~22:53, 23:05, ~23:14. Although Mr. Peralta agreed to the ALJ entering an order after the hearing that held in abeyance a decision on administrative decision # 1224450 pending the results of the coaching session, in Hearing Decision 16-UI-57376 the ALJ affirmed the administrative decision "as to present status" but concluded that "additional information from the coaching session may change that." Hearing Decision 16-UI-57376 at 2; *see also* Audio at ~22:03. However, as of April 22, 2016, it appears that the promised coaching session had not taken place.

Absent the coaching session having occurred between claimant and Mr. Peralta or another Department representative, and a reasonable time having elapsed after that session to enable claimant to submit, if he chooses, revised answers to the feasibility study and a Department representative to re-score claimant's answers, it appears that further such proceedings may be necessary before this matter is ripe for EAB's review. We remand this matter to allow the coaching session to occur, to allow the Department to consider any revised feasibility study that claimant might submit and to determine the Department's response to and scoring of that revised study. If Mr. Peralta or another Department representative has not yet held a coaching session with claimant, we urge that it promptly be done, for claimant to promptly submit thereafter a revised feasibility study to the Department, if he so chooses and for the Department to promptly issue its decision on claimant's revised feasibility study and his application to participate in the SEA program. If upon a review of a revised study, the Department approves claimant's application for the SEA program, we expect claimant to dismiss this application for review pending before EAB.

On remand, if claimant has submitted revised answers to the Department's feasibility study and the Department has found claimant's answers inadequate or claimant has chosen not to submit a new feasibility study, the ALJ should fully inquire into the basis for the Department's decision denying claimant's application. Appropriate areas of inquiry would include what the components of the feasibility study are, what claimant submitted, how it was deficient, the minimum adequate score on the feasibility study to allow an applicant to participate in the SEA program, how much claimant's score on the study fell short of the minimum requirements, how the representative who scored claimant's responses to the Department's questions reached the scores he or she did on each question, what guidelines the representative applied in scoring claimant's submissions, the specific deficiencies in claimant's answers to the questions and whether and how those deficiencies might be rectified given the nature of claimant's business and the specifics of his business plan. At a hearing on remand that considers these matters, claimant should be permitted to respond to the Department's testimony and its other evidence, if any.

Absent the above inquiries, as appropriate, EAB is unable to determine whether claimant remains ineligible to participate in the SEA program and, if the Department has continued to find claimant ineligible, whether that conclusion was well-founded. ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the state of the record is insufficient for a determination of whether claimant became eligible for the SEA program after the hearing and, if not, the reasons why he is not, Hearing Decision 16-UI-57536 is reversed, and this matter remanded for further development of the record.

**DECISION:** Hearing Decision 16-UI-57536 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE OF SERVICE: June 7, 2016**

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-57376 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.

**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](http://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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