

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0742

Reversed & Remanded

PROCEDURAL HISTORY: On April 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 75155). The decision was sent to the employer at the following address: Margaret McVay/Developmental Disab c/o TNT Intermediary Svcs Inc, 4935 Indian School Rd NE, Salem, OR 97305. Claimant filed a timely request for hearing. On May 25, 2016, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for June 7, 2016 to the employer at the Indian School Rd NE address. On June 7, 2016, ALJ Vincent conducted a hearing at which the employer failed to appear, and on June 15, 2016, issued Hearing Decision 16-UI-61824, concluding that the employer discharged claimant, not for misconduct. The hearing decision was sent to the employer at the Indian School Rd NE address, and also sent to the following address: Margaret McVay, 1581 SE Evans Ave, Troutdale OR 97060. On June 20, 2016, the employer filed an application for review with the Employment Appeals Board (EAB).

On June 22, 2016, Ms. McVay submitted a letter in which she provided information about claimant's work separation. This letter is considered a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party presenting the information shows that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. In support of her request, Ms. McVay stated that

The notice of hearing was sent to the Fiscal Intermediary Service, not to me, the actual employer. The Fiscal Intermediary Service did forward notice of hearing to me, but I did not receive the forwarded notice until after the hearing took place. 6/22/16 letter at 1.

OAR 471-040-0015(1)(August 1, 2004) requires that notice of a hearing be 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.” Where, as here, a party fails to appear for a hearing, it is first necessary to determine whether the party was afforded due process of law, i.e., whether the hearing notice was mailed to the absent party at the party’s last known address as shown by the record of the Director. It is unclear, from this record, what was the employer’s address of record. For this reason, Hearing Decision 16-UI-61824 is reversed, and the matter is remanded to the ALJ to determine the employer’s address of record, and whether the May 25, 2016 notice of hearing was sent to that address. If the notice of hearing was not mailed to the employer’s address of record, the ALJ must conduct a new hearing on the merits of decision # 75155. If the notice of hearing was mailed to the address of record, the ALJ should then inquire about any circumstances beyond the employer’s reasonable control prevented it from appearing at the hearing. If the ALJ determines that such circumstances existed, the ALJ must then conduct a hearing on the merits of decision # 75155.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-51604 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-61824 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: June 24, 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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