

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0105

Affirmed
Request for Hearing Withdrawn
Decision # 92516 Undisturbed

PROCEDURAL HISTORY: On December 21, 2016, the Oregon Employment Department (the Department) served notice of two administrative decisions, one concluding that Power Auto, Inc. discharged claimant for misconduct (decision # 91357), and the other concluding the Environment Control Salem 415 Inc. discharged claimant for misconduct (decision # 92516). On December 26, 2016, claimant filed a timely request for hearing on decision # 91357. Although claimant did not file a request for hearing on decision # 92516, claimant's request for hearing was interpreted as applying to it, as well. On January 5, 2017, the Office of Administrative Hearings (OAH) mailed notice of two hearings. The hearing on decision # 91357 was scheduled for January 19, 2017 at 9:30 a.m. and the hearing on decision # 92516 was scheduled for January 19, 2017 at 10:45 a.m. On January 19, 2017 at 9:30 a.m., ALJ S. Lee conducted a hearing on decision # 91357, during which claimant withdrew her request for hearing on decision # 92516. On January 19, 2017, the ALJ issued Hearing Decision 17-UI-75010, dismissing claimant's request for hearing on decision # 92516. On January 24, 2017, the ALJ issued Hearing Decision 17-UI-75294, concluding that Power Auto, Inc. discharged claimant, but not for misconduct. On January 30, 2017, claimant filed an application for review of Hearing Decision 17-UI-75010 with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, EAB is barred from considering the argument when reaching this decision. Even if we had, the outcome of this decision would remain the same for the reasons explained.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant withdrew her request for hearing on decision # 92516, and her request for hearing should therefore be dismissed.

Administrative law judges may dismiss a claimant's request for hearing if two factors are satisfied: (1) the claimant was the party that originally requested the hearing; and (2) the claimant asked that her request for hearing be withdrawn. ORS 657.270(7)(a)(A); OAR 471-040-0035(1) (August 1, 2004).

In this case, claimant is considered the “requesting party” since administrative decision # 92516 denied her benefits and because her request for hearing on decision # 91357 was interpreted as applying to decision # 92516 as well. The first criteria is satisfied.

The next question is whether or not claimant asked to withdraw her request for hearing on decision # 92516. Claimant testified during the hearing on decision # 91357 that she never intended to request a hearing on decision # 92516, she was “not trying to collect anything from” Environment Control, the hearing about her work separation from Environment Control “isn’t going to happen,” and she had no intention to proceed with it. Audio recording at 12:20, 12:45. The ALJ explained that the unemployment insurance program does not allow her to claim “against” any particular employer and not claim against others, and that any work separation from any employer, no matter how briefly she worked for that employer, could affect her qualification to receive benefits. The ALJ twice explained to claimant that if she did not have a hearing on decision # 92516 that she would be disqualified from receiving benefits and told her that the disqualification from receiving benefits would be effective November 27, 2016 until she earned enough money from other work to requalify for benefits. Audio recording at 13:50, 16:25. Although claimant expressed some confusion during her discussion with the ALJ, once the ALJ specifically stated that claimant would be disqualified from benefits because of the Environment Control work separation covered in decision # 92516 beginning November 27, 2016, claimant affirmed to the ALJ that she did not want to have a hearing on that decision. We infer from claimant’s application for review of the decision allowing her withdrawal that she is dissatisfied with the choice she made. It appears from our review of the audio recording of claimant’s request to withdraw, however, that she knowingly made an informed choice to withdraw her request for hearing after having been informed about the consequences of withdrawing her request. Considering the totality of the circumstances, the ALJ did not err by allowing claimant to withdraw her request for hearing.

DECISION: Hearing Decision 17-UI-75010 is affirmed; claimant’s request for hearing on decision # 92516 is dismissed. Decision # 92516 remains undisturbed.

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

DATE of Service: February 1, 2017

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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