

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0113

Reversed & Remanded

PROCEDURAL HISTORY: On September 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 83411). Claimant filed a timely request for hearing. On October 20, 2016, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for November 2, 2016. On November 2, 2016, claimant failed to appear at the hearing, and on November 3, 2016 ALJ Vincent issued Hearing Decision 16-UI-70489, dismissing claimant's request for hearing due to her failure to appear. On November 19, 2016, claimant filed a timely request to reopen the November 2, 2016 hearing. On January 9, 2017, ALJ Vincent conducted a hearing at which he orally granted claimant's request for a reopening and conducted a hearing on decision # 83411. On January 12, 2017, ALJ Vincent issued Hearing Decision 17-UI-74661, affirming decision # 83411. On January 26, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

ORS 657.275 provides that EAB shall review the record of the case and promptly affirm, modify, or set aside the decision of the ALJ if the Director of the Department or any interested party files a timely application for review. In the present case, however, the hearing record document identified as Hearing Decision 17-UI-74661 states that claimant failed to appear at the January 9th hearing and her hearing request was, therefore dismissed. However, the record includes a copy of an audio recording from the January 9th hearing indicating that claimant appeared and the ALJ conducted a hearing on the merits of decision # 83411. It appears that the decision issued as Hearing Decision 17-UI-74661 is actually just a copy of Hearing Decision 16-UI-70489. Hearing Decision 17-UI-74661 is missing from the hearing record, which therefore is incomplete. We therefore reverse Hearing Decision 17-UI-74661 as unsupported by a complete record, and remand to OAH for such other and further proceedings as may be necessary to complete the record.

In addition, claimant's written argument indicates that OAH may not have mailed the parties Hearing Decision 17-UI-74661 on January 12, 2017, but instead mailed them a second copy of Hearing Decision 16-UI-70489, which claimant interpreted as a re-dismissal of her request for hearing or a denial of her request for a reopening. If so, OAH should mail Hearing Decision 17-UI-74661 to the parties. Given that the ALJ orally granted claimant's request for a reopening and conducted a hearing on decision #

83411, which was affirmed, we infer that Hearing Decision 17-UI-74661 concluded that claimant is disqualified from receiving benefits based on her work separation from the employer, and that claimant intends to proceed with her application for review of Hearing Decision 17-UI-74661.

DECISION: Hearing Decision 17-UI-74661 is set aside, and this matter remanded for further proceedings consistent with this order.

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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