

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0823-R

Employment Appeals Board Decision 2017-EAB-0823 – Withdrawn
Application for Review of Hearing Decision 17-UI-86423 – Dismissed

PROCEDURAL HISTORY: On February 24, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 93639). The employer filed a timely request for hearing. On June 1, 2017, the Office of Administrative Hearings (OAH) mailed notice of hearing scheduled for June 20, 2017. On June 20, 2017, ALJ Shoemake conducted a hearing at which claimant failed to appear, and on June 23, 2017 issued Hearing Decision 17-UI-86423, concluding the employer discharged claimant for misconduct. On July 10, 2017, claimant filed an application for review with the Employment Appeals Board (EAB) and a request to reopen the June 20th hearing with OAH. On July 12, 2017, OAH mailed notice of a hearing on the reopen request scheduled for July 31, 2017. On July 31, 2017, ALJ Shoemake conducted a hearing. On August 3, 2017, EAB issued Employment Appeals Board Decision 2017-EAB-0823, affirming Hearing Decision 17-UI-86423.

CONCLUSIONS AND REASONS: Employment Appeals Board Decision 2017-EAB-0823 was issued in error and should be withdrawn, and claimant’s application for review of Hearing Decision 17-UI-86423 should be dismissed without prejudice.

At the same time claimant filed an application for review of Hearing Decision 17-UI-86423 with EAB, claimant also filed with OAH a request to reopen the June 20th hearing that resulted in that decision. Only one office at a time can review the same issue, however, and although EAB has jurisdiction to review hearing decisions issued by ALJs from OAH, OAH has jurisdiction over reopen requests. *See* ORS 657.270(5); ORS 657.270(6); ORS 657.275. EAB Decision 2017-EAB-0823 was therefore issued in error, and that decision is hereby withdrawn to allow the proceedings on claimant’s request to reopen to be completed at OAH. In addition, because claimant initiated further proceedings at OAH by filing his request to reopen the June 20th hearing, this matter is not yet ripe for review at EAB. Claimant’s application for review of Hearing Decision 17-UI-86423 is therefore dismissed without prejudice to allow the proceedings at OAH to be completed. EAB Decision 2017-EAB-0823 has no force or effect, and Hearing Decision 17-UI-86423 remains undisturbed.

DECISION: EAB Decision 2017-EAB-0823 is withdrawn. The application for review filed July 10, 2017 is dismissed. Hearing Decision 17-UI-86423 remains undisturbed.

Susan Rossiter, J. S. Cromwell and D. P. Hettle

DATE of Service: August 7, 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.

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.