

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0952

Affirmed
Requests for Hearing Dismissed

PROCEDURAL HISTORY: On June 20, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work during the week including June 4 through June 10, 2017 (23-17) (decision # 112442). On June 20, 2017, the Department served notice of another administrative decision concluding claimant did not actively seek work during the weeks including May 28 through June 10, 2017 (week 22-17 through 23-17) (decision # 113036). Claimant filed a timely request for hearing on each decision. On July 7, 2017, the Office of Administrative Hearings (OAH) mailed notice of a consolidated hearing on decisions # 112442 and 113036 scheduled for July 20, 2017 at 1:30 p.m. On July 20, 2017, ALJ M. Davis convened a consolidated hearing, at which claimant withdrew his requests for hearing, and issued Hearing Decision 17-UI-88500 dismissing claimant's request for hearing on decision # 112442, and Hearing Decision 17-UI-88498 dismissing claimant's request for hearing on decision # 113036. On August 4, 2017, claimant filed timely applications for review of Hearing Decisions 17-UI-88500 and 17-UI-88498 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-88500 and 17-UI-88498. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0951 and 2017-EAB-0952, respectively).

CLAIMANT'S WRITTEN ARGUMENT. In written argument, claimant, claimant asked for clarification regarding three issues. Written argument at 2. The first was why a Department representative at his local WorkSource Oregon office "could not tell me why I had to do a job search" under the circumstances of his temporary layoff. EAB cannot answer that question but the May 18, 2017 letter from the Department to claimant, which he submitted as "Exhibit A" with his written argument did recommend that claimant "learn more about eligibility and job search requirements in [his] Claimant Handbook," which likely provided all the information that he needed in that regard.

The second issued regarded why claimant had two case numbers for his claim. OAH designates a separate case number for each administrative decision for which it schedules a hearing. Here, two

administrative decisions were at issue. Accordingly, OAH designated two case numbers which it scheduled for one consolidated hearing.

The third issue regarded how claimant was to ensure that he would not be charged twice to repay a single overpayment. That question should be addressed to a Department representative at the Portland Metro UI Call Center 200: (503) 292-2057 - UI or (877) 345-3484 - UI Toll Free.

FINDINGS OF FACT: (1) Claimant received the July 7, 2017 notice of a consolidated hearing on decisions # 112442 and 113036 scheduled for July 20, 2017 at 1:30 p.m. On July 20, 2017, ALJ M. Davis convened a consolidated hearing, at which claimant withdrew his requests for hearing on the two decisions.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant withdrew his requests for hearing, which therefore should be dismissed.

ORS 657.270(7)(a)(A) and OAR 471-040-0035(1) (August 1, 2004) permit an ALJ to dismiss a party's request for hearing if the requesting party asks to withdraw it. At the outset of the hearing, after claimant identified himself as the person on the telephone line, the following exchange between claimant and the ALJ occurred:

ALJ: Are you expecting a representative or any witnesses today?

Claimant: No, you can go ahead – I've gone back to work full time for my previous employer, as I put down in my claim...So you can go ahead and dismiss my case...I have no problem.

ALJ: Oh. Are you withdrawing your request for hearing?

Claimant: Yes, yes.

ALJ: Oh, okay. [ALJ then checks to see if there is a representative from the Employment Department on the line. After determining that there is not she continues...]

Okay. Well that's fine. You're welcome to withdraw your request for hearing. I'm happy to grant that request. What I will do is I will issue two dismissals that you will receive in the mail indicating that you withdrew your requests for hearing and we don't need to proceed at this point.

Claimant: Yep.

ALJ: Alright. Thank you so much for calling and letting me know.

Claimant: Okay. Thank you.

Audio recording at ~ 2:10 to 3:30.

Here, the record clearly establishes that claimant withdrew his hearing requests, and the ALJ confirmed that that is what claimant intended to do. The ALJ did not err in dismissing claimant's requests for hearing pursuant to his request that she do so.

DECISION: Hearing Decisions 17-UI-88500 and 17-UI-88498 are affirmed.

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

DATE of Service: August 23, 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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