

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1087

Reversed & Remanded

PROCEDURAL HISTORY: On July 8, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct, and was not subject to wage cancelation (decision # 134911). The employer filed a timely request for hearing. On August 14, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for August 24, 2017. On August 24, 2017, ALJ M. Davis conducted a hearing, at which claimant failed to appear, and on August 25, 2017 issued Hearing Decision 17-UI-91163, concluding claimant's discharge was for misconduct. On September 11, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On July 8, 2017, claimant contacted the Department and changed his address from one on Skidmore to one on Wygant.¹ Also on July 8, 2017, the Department mailed decision # 134911 to claimant at his old Skidmore address.

(2) OAH mailed the August 14th notice of hearing to claimant at the old Skidmore address. OAH also mailed the August 25th hearing decision to claimant at the old Skidmore address. The U.S. Postal Service subsequently returned the hearing decision to OAH with a sticker affixed that said, "return to sender, not deliverable as addressed, unable to forward."

(3) Claimant first learned that there had been a decision to deny him benefits when he received the Department's September 6, 2017 letter stating that "[a]n administrative decision found that you were discharged for misconduct."²

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

² The letter claimant received was inaccurate. Hearing Decision 17-UI-91163, not an administrative decision, found that claimant was discharged for misconduct.

CONCLUSIONS AND REASONS: Hearing Decision 17-UI-91163 should be set aside and this matter remanded.

Claimant asked EAB for a new hearing. We construe claimant's request as a request for EAB to consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing of the party offering the information shows that circumstances beyond its reasonable control prevented it from presenting the information at the hearing. Although claimant did not submit argument in support of his request in this case, a quick review of Department records reveals that it is almost certain that claimant has never received notice of the Department's July 8th decision, OAH's August 14th notice of hearing or OAH's August 25th hearing decision denying him benefits because all of those documents were mailed to claimant at an old address. His failure to receive those documents amounts to circumstances beyond claimant's reasonable control because he had, in fact, changed his address with the Department at the time all of those events occurred, and, since he had no notice of pending proceedings at OAH, would have had no reason to update his address with OAH, as well. The Department's and OAH's failures to send decisions and notices to claimant at his address of record necessitates that claimant's request for a new hearing be allowed, the hearing decision in this matter be set aside, and this matter remanded to OAH for a new hearing and decision on the merits of the discharge and wage cancelation matters.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-91163 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 17-UI-91163 is set aside, and this matter remanded for further proceedings consistent with this order.

J. S. Cromwell and D. P. Hettle.

DATE of Service: September 18, 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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