

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0014

Application for Review Allowed
Reversed and Remanded

PROCEDURAL HISTORY AND FINDINGS OF FACT: On October 17, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 152601). The Department mailed the notice to the employer's correct name and address in Happy Valley, Oregon. Claimant filed a timely request for hearing. On October 31, 2017, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for November 14, 2017. However, OAH mailed the employer's notice to an incorrect address in Portland, Oregon. On November 14, 2017, ALJ Jarry conducted a hearing, at which the employer failed to appear, and issued Hearing Decision 17-UI-96832, concluding the employer discharged claimant, but not for misconduct. On November 14, 2017, OAH served notice of Hearing Decision 17-UI-96832, but mailed the employer's notice to the same incorrect address in Portland, Oregon. On January 2, 2018, the employer filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND RESONS: The employer's application for review of Hearing Decision 17-UI-96832 was timely, and therefore is allowed. Hearing Decision 17-UI-96832 is reversed, and this matter remanded to OAH for another hearing on whether claimant is disqualified from receiving benefits based on a work separation from the employer.

Hearing Decision 17-UI-96832 was issued and served on November 14, 2017, and stated that any appeal from the decision had to be filed on or before December 4, 2017 to be timely. The employer filed its application for review of Hearing Decision 17-UI-96832 on January 2, 2018. Thus, the first issue in this case is whether the employer's application for review of Hearing Decision 17-UI-96832 should be allowed.

OAR 471-040-0030(1) (August 1, 2004) states that the ALJ shall promptly prepare and serve a written decision after the conclusion of the hearing. ORS 657.270(4)(b) provides that all parties shall be notified of the ALJ's decision. OAR 471-040-0030(1) states that copies of the ALJ's decision shall be personally delivered or mailed to the parties, or their authorized agents, at their last address of record. ORS 657.270(6) provides that the ALJ's decision is final unless a party to the hearing files an

application for review with EAB within 20 days after the delivery of the notice, or if mailed, within 20 days after the notice was mailed to the party's last-known address.

Here, OAH failed to notify the employer of Hearing Decision 17-UI-96832 by personally delivering or mailing notice of the decision to the employer at its last address of record as required under ORS 657.270(4)(b) and OAR 471-040-0030(1). Thus, under ORS 657.270(6), Hearing Decision 17-UI-96832 is not final with respect to the employer, and its application for review of that decision therefore is timely, and allowed.

ORS 657.270(4) requires that all parties be given reasonable opportunity for a fair hearing. OAR 471-040-0015 (August 1, 2004) states that to afford all parties a reasonable opportunity for a fair hearing, notice of hearing setting forth the time, date, place, and issue(s) in general shall be personally delivered or mailed at least five days in advance of the hearing to parties or their authorized agents at their last known address of record with the Department.

Here, OAH failed to personally deliver or mail the October 31, 2017 notice of hearing to the employer's last known address of record with the Department as required under OAR 471-040-0015, and therefore did not afford the employer reasonable opportunity for a fair hearing as required under ORS 657.270(4). Hearing Decision 17-UI-96832 therefore is reversed, and this matter remanded to OAH for another hearing on whether claimant is disqualified from receiving benefits based on a work separation from the employer.

DECISION: Hearing Decision 17-UI-96832 is set aside, and this matter remanded for further proceedings consistent with this order.¹

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

DATE of Service: January 9, 2018

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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¹ The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision Hearing Decision 17-UI-96832 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.