

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0390

Reversed & Remanded

PROCEDURAL HISTORY: On July 30, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from June 23, 2013 through July 27, 2014. (decision # 95941). On August 19, 2013 the administrative decision became final without a request for hearing having been filed. On December 30, 2013, claimant filed a late request for hearing. On January 17, 2014, ALJ Kangas issued Hearing Decision 14-UI-08838, dismissing claimant's request for hearing as untimely, subject to claimant's "right to renew" the request by submitting a response to the "Appellant Questionnaire" attached to the hearing decision within 14 days of the date the decision was mailed. Claimant responded in writing to the Office of Administrative Hearings (OAH). On February 3, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).¹

A party that files a late hearing request must provide a written statement regarding the reasons for the late request, which OAH "shall consider in determining whether good cause exists for the late filing and whether the request was filed within a reasonable time." OAR 471-040-0010(4) (October 29, 2006). Because OAH failed to consider claimant's written statement regarding the reasons for her late hearing request, this matter is remanded for consideration of claimant's statement.

DECISION: Hearing Decision 14-UI-08838 is set aside, and this matter remanded for further proceedings consistent with this order.

¹ Because claimant submitted her application for review by mail, the filing date is the date the document was deposited in the United States mail "as evidenced by the postmark affixed to the envelope by the United States Postal service." OAR 471-041-0065(1)(b) (October 29, 2006). The postmark on the envelope in which claimant mailed her application for review is unclear, however; under these circumstances, the filing date is the one that EAB determines to be the most probable date of filing. OAR 471-041-0065(2) (October 29, 2006). Claimant's application for review contains an internal date of Saturday, February 1, 2014. It is likely that claimant mailed her application for review no more than a day or two after she prepared; consequently, we conclude that February 3, 2014 is the most probable date on which claimant deposited her application in the mail and the most probable filing date.

Susan Rossiter and Tony Corcoran;
D. E. Larson, not participating.

DATE of Service: March 17, 2014

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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.