

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0547

### *Reversed and Remanded*

**PROCEDURAL HISTORY:** On December 23, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 90545). On January 13, 2014, decision #90545 became final without a timely appeal having been filed. On March 13, 2014, claimant filed a request for hearing. On March 21, 2014, ALJ Kangas issued Hearing Decision 14-UI-13103, dismissing claimant's request for a hearing as untimely. On April 3, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

In her application for review, claimant explained that she did not file a timely request for hearing because of grief over the death of her mother. Claimant asserts that her mother passed away some time before she quit her job with Standard Insurance on September 27, 2013. According to claimant, she disagreed with the administrative decision but was in "no mental condition to respond" to a decision issued on December 23, 2013, because she was "grieving during the Holidays." OAR 471-041-0090(2)b allows EAB to consider new information if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at hearing. Here, the ALJ dismissed claimant's late request for a hearing without conducting a hearing; in addition, claimant was not offered an opportunity to renew her hearing request.<sup>1</sup> The ALJ's denial of claimant's late hearing request was based solely on information claimant provided in her hearing request

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<sup>1</sup> The Office of Administrative Hearings often dismisses a hearing request as untimely, subject to a party's right to renew the request by responding to an "Appellant Questionnaire" attached to the hearing decision within 14 days of the date the hearing decision is issued. Hearing Decision 14-UI-13103 did not provide claimant with any opportunity to renew her hearing request, and no "Appellant Questionnaire" was attached to the decision.

ORS 657.270 requires the ALJ to give parties a reasonable opportunity for a fair hearing. That obligation necessarily requires that the ALJ develop a record that shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Here, claimant had no opportunity to adequately explain why her hearing request was late. The ALJ thus failed to develop the record necessary to determine whether claimant had good cause for filing a late request for a hearing under ORS 657.875 and OAR 471-040-0010(1), and whether claimant submitted a hearing request within a reasonable time after the circumstances that prevented a timely filing ceased under OAR 471-040-0010(3). Accordingly, this matter is remanded for development of the record.

**DECISION:** Hearing Decision 14-UI-13103 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** April 21, 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.