

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0670

Reversed & Remanded

PROCEDURAL HISTORY: On February 28, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 71357). Claimant filed a timely request for hearing. On April 10, 2014, the Office of Administrative Hearings (OAH) issued a notice for a hearing scheduled for April 17, 2014. Prior to the hearing, claimant's attorney requested a postponement, which OAH denied.

On April 17, 2014, ALJ Lee convened a hearing at which claimant appeared without counsel, and the employer did not appear. Claimant again requested a postponement, which the ALJ denied. Claimant then declined to participate without counsel and the ALJ adjourned the hearing. On April 18, 2014, ALJ Lee issued Hearing Decision 14-UI-15598 in which she affirmed the administrative decision. On April 23, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) On March 19, 2014, claimant filed a request for a hearing on decision #71357. Claimant decided to wait until she was notified of the hearing date and time before finding an attorney. Claimant erroneously believed, based on a conversation with a Department representative, that she would be contacted by phone to arrange a hearing date.

(2) On April 10, 2014, OAH mailed notice of a hearing scheduled for April 17, 2014, at 8:15 a.m. On April 15, 2014, claimant picked up the hearing notice from the post office box in which she receives her mail. Because she lives five miles from the post office, claimant checks her post office box only once or twice a week.

(3) On April 16, 2014, claimant retained counsel. Also on April 16, claimant's attorney sent by facsimile a letter of representation to OAH¹; in his letter, claimant's attorney requested a postponement of the April 17 hearing, stating that he was unavailable due to a "prior commitment in another matter." OAH denied the request to postpone the hearing.

(4) On April 17, 2014, claimant appeared at the hearing; the employer did not appear. Claimant asked that the hearing be postponed to a date and time convenient for her attorney. The ALJ denied claimant's request, reasoning that claimant should have begun looking for an attorney after she filed her appeal (Audio 6:47), and that claimant should not have waited "until the last minute" to find an attorney. (Audio 10:08). The ALJ explained claimant's choices: (1) to proceed with the hearing, without her attorney; or (2) decline to proceed with the hearing, in which case the ALJ would dismiss claimant's hearing request and the administrative decision would remain undisturbed, subject to claimant's right to request reopening or file an application for review.

CONCLUSIONS AND REASONS: We disagree with the ALJ's decision to deny claimant's request for postponement of the hearing. We remand this matter to OAH for a new hearing, and a decision on the merits of the work separation.

OAR 471-040-0021(2) provides that an ALJ may grant a party's request for postponement of a hearing if the request is promptly made after the party learns about the need for a postponement, and if the party has good cause for the request. Good cause for a postponement exists if the circumstances causing the request are beyond the party's reasonable control, and failure to grant the continuance "would result in undue hardship to the requesting party." OAR 471-040-0021(3)(a) and (b).

Claimant's attorney requested postponement of the hearing on the day that claimant hired him; accordingly, the postponement request was promptly made. Claimant had good cause to postpone the hearing. Claimant sought postponement because her attorney was unable to attend the scheduled hearing. Under OAR 471-040-0025(4), parties may appear on their own behalf or with counsel. Claimant chose to appear with counsel. The schedule of claimant's attorney was a matter beyond her reasonable control. Claimant's choice to seek assistance of an attorney after she received the hearing notice and knew the date and time of the hearing was not unreasonable. Claimant was understandably unfamiliar with the procedures followed by the Office of Administrative Hearing and unaware that she would have only seven days' notice of her hearing. Once claimant received the hearing notice, claimant promptly arranged for an attorney to represent her.

The ALJ's failure to grant postponement resulted in undue hardship to claimant. Claimant was faced with a difficult choice: she could proceed with the hearing, but without the benefit of counsel, or refuse to proceed with the hearing, and have her hearing request dismissed, subject the outcome of a request to reopen or an application for review by the EAB.

¹ We admit the attorney's letter into evidence in this case as EAB Exhibit 1. OAR 471-041-0090(2) (October 29, 2006). A copy of Exhibit 1 is attached to this decision. Any party that objects to our admission of this exhibit may submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of the date on which this decision is mailed. Unless an objection is received and sustained, the exhibit will remain.

Because claimant has shown good cause for postponement of her hearing, we reverse this matter and remand it for a hearing on the merits of claimant's work separation.

DECISION: Hearing Decision 14-UI-15598 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter, Tony Corcoran, and J. S. Cromwell, *pro tempore*;
D. E. Larson, not participating.

DATE of Service: May 16, 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.