

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1072

Reversed & Remanded

PROCEDURAL HISTORY: On February 25, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 160549). Decision # 160549 stated that a request for hearing needed to be filed on or before March 17, 2014 or the decision would become final. On May 7, 2014, claimant filed a late request for hearing. On May 15, 2014, ALJ Kangas issued Hearing Decision 14-UI-17674, dismissing claimant's late request for hearing subject to claimant's right to renew the hearing request by filing the Appellant Questionnaire included with the decision within ten days of the mailing of that decision. On May 19, 2014, claimant filed a completed Appellant Questionnaire. On June 16, 2014, ALJ Kangas issued Hearing Decision 14-UI-19719, dismissing claimant's late request for hearing after reviewing her Appellant Questionnaire. On June 19, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 14-UI-19719 is reversed and this matter is remanded for further development of the record.

In Decision 14-UI-19719, the ALJ disregarded the appellant questionnaire in which claimant stated that a learning disability prevented her from comprehending that she could request a hearing on decision #160549 and concluded that claimant did not show good cause for the late filing of her request for hearing. The ALJ reasoned that "[c]arefully reading the administrative decision and following its instructions were within [claimant's] reasonable control" and that if she did not understand any part of those instructions "it was within her reasonable control to contact the Employment Department for assistance." Decision 14-UI-19719 at 2.

OAR 471-040-0010(1)(a) (February 10, 2012) states that good cause exists for a delay in filing a request for a hearing if the delay results from the party's excusable mistake or from factors beyond the party's reasonable control. Although the late filing of claimant's request for hearing might have been within the reasonable control of an objectively reasonable person, claimant's delay in filing that request might have been an excusable mistake depending on the nature and severity of her asserted learning disability. To determine if claimant's delay was excusable, we need more information about the nature of claimant's

disability, including its name, if any; how long claimant has known she had the disability; whether and how it interferes with claimant's ability to comprehend, process or act in response to written instructions; how the disability has impacted claimant in the past; how specifically it caused claimant not to know she could request a hearing on decision #160549 and that her time to request a hearing was limited; and any steps claimant might have taken in the past to adjust for the effects of this disability and to adequately comprehend written instructions. Although claimant stated in her response to the Appellant Questionnaire that she was not aware that she could request a hearing on decision # 160549 until she spoke with her pastor, we need more information about how the pastor came to discuss that decision with claimant, when the pastor told her she could request a hearing, if claimant discussed her denial of benefits with any other people before she discussed it with the pastor and, if so, with whom and what was said and how claimant ultimately located the phone number to make her telephone request for hearing. We also need more information about when claimant was first aware that Department representatives were available by phone to provide assistance to applicants for unemployment benefits and, if applicable, why she did not call them sooner after the decision denying her benefits. Absent such inquiries, EAB cannot determine whether there is good cause to extend to May 7, 2014 the time for claimant to file a request for hearing on decision #16059.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing 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); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop the record necessary for a determination of whether claimant had good cause to file her request for hearing on May 7, 2014, Hearing Decision 14-UI-19719 is reversed, and this matter remanded for further development of the record.

DECISION: Hearing Decision 14-UI-19719 is set aside, and this matter remanded for further proceedings consistent with this order.

DATE of Service: July 29, 2014

Susan Rossiter and Tony Corcoran;
J. S. Cromwell, not participating

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 14-UI-19719 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.

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 court.oregon.gov. Once on the website, click on the blue tab for "Materials and Resources." On the next screen, click on the tab that reads "Appellate Case Info." On the next screen, select "Appellate Court Forms" from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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