

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1181

*Reversed & Remanded
Request to Reopen Granted*

PROCEDURAL HISTORY: On May 1, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 75004). Claimant filed a timely request for hearing. On May 12, 2014, the Office of Administrative Hearings issued notice of a hearing scheduled for May 20, 2014, at 8:15 a.m. On May 20, 2014, ALJ Murdock issued Hearing Decision 14-UI-17950, dismissing claimant's hearing request for failure to appear. Claimant filed a timely request to reopen. On June 24, 2014, ALJ Murdock conducted a hearing, and on June 25, 2014, issued Hearing Decision 14-UI-20369, denying claimant's request to reopen. On July 10, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On May 7, 2014, claimant requested that her mail be held at the local post office until June 12, 2014. Claimant had left the address where she had previously been living, 3848 Etta Drive, Salem, Oregon. After leaving this address, claimant stayed temporarily with various family members and friends; she had no permanent address. Claimant went to the post office twice a week, on Wednesday and Friday, to pick up her mail.

(2) On Friday, May 16, 2014, claimant went to the post office to pick up her mail and was told that the mail had been mistakenly delivered to her former address, 3848 Etta Drive. Claimant was also told that the letter carrier would have to get the mail that had been mistakenly delivered and return it to the post office.

(3) Claimant never received notice of the May 20, 2014 hearing. On May 21, 2014, claimant received Hearing Decision 14-UI-17950 and learned that she had missed the May 20 hearing.

CONCLUSION AND REASONS: We disagree with the ALJ. Claimant has shown good cause to reopen her hearing.

OAR 471-040-0040(1) (February 10, 2013) provides that an ALJ may reopen a hearing if the party requesting reopening failed to appear at the hearing and demonstrates good cause for failing to appear. Good cause for reopening exists if the party's failure to act arises from factors beyond the party's reasonable control. OAR 471-040-0040(2)(a). Here, the ALJ concluded that claimant failed to show good cause to reopen the hearing that she missed because she "did not update her address in order for notice [of the hearing] to be properly delivered to her." Contrary to the ALJ's assertion, however, claimant could not "update her address" with the Office of Administrative Hearing because she did not have a permanent address. Because she was living temporarily with friends and family members and had no permanent address, claimant arranged for the post office to hold her mail so that claimant could pick it up. However, the post office mistakenly delivered claimant's mail to her old address, one she had left on May 7, 2014. The record shows that as a result of this error, claimant never received notice of the May 20, 2014 hearing. Because the mistake made by the post office is a factor beyond claimant's reasonable control, claimant has demonstrated good cause to reopen her hearing.

Hearing Decision 14-UI-20369 is reversed; in accordance with ORS 657.275(1), this matter is remanded to the Office of Administrative Hearings for a hearing and a decision on the merits of claimant's work separation.

DECISION: Hearing Decision 14-UI-20369 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: July 31, 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 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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