

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-1954

Reversed and Remanded

PROCEDURAL HISTORY: On October 7, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 120041). Claimant filed a timely request for hearing. On October 27, 2014, the Office of Administrative Hearings issued notice of a hearing scheduled for November 10, 2014 at 9:30 a.m. Claimant did not appear at the hearing. On November 10, 2014, ALJ Triana issued Hearing Decision 14-UI-28454, dismissing claimant's hearing request for failure to appear. On December 1, 2014, Hearing Decision 14-UI-28454 became final without an application for review having been filed. On December 2, 2014 claimant submitted a late request to reopen her hearing. On December 16, 2014, ALJ Kangas reviewed claimant's request and issued Hearing Decision 14-UI-30477, denying claimant's late request to reopen. On December 22, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 14-UI-30477 should be reversed, and this matter remanded for additional proceedings.

A party who fails to appear at the hearing may request that the hearing be reopened, providing the party files the request in writing within 20 days after the hearing decision was issued and shows good cause¹ for failing to appear. ORS 657.270(5). The 20 day filing period may be extended upon a showing of good cause. ORS 657.875. Good cause means factors beyond the party's reasonable control or an excusable mistake. OAR 471-040-0040; OAR 471-040-0041.

The first issue to decide in this case is whether claimant showed good cause to extend the deadline for filing her request to reopen.¹ Claimant stated that she filed her request to reopen on December 2, 2014,

¹ This case potentially has three independent issues. The first issue is whether claimant had good cause for filing her request to reopen after the deadline for doing so had expired. The second issue is whether claimant had good cause for failing to appear at the November 10th hearing. However, the second issue will not be addressed unless and until claimant shows good cause for the late filing. The third issue is whether or not claimant can prove she had good cause for voluntarily leaving her job with The Home Depot when she did. However, the third issue will only be addressed if claimant has shown good cause

on advice and instruction she reported receiving from OAH staff that same day. On December 2, 2014, however, claimant's request to reopen would already have been one day late. The record fails to show whether, or not, staff advised her on December 2, 2014 that she would first have to justify her late filing before the reason(s) she missed the hearing could be examined, or that she would have to include a written statement about that with her request to reopen. Because incomplete or inaccurate advice might, under certain circumstances, constitute a factor beyond claimant's control, or reliance on a belief that she had received complete information about the late reopening process might be considered an excusable mistake, the failure of any evidence in the record to address those issues leaves us unable to determine whether or not claimant had good cause to extend the filing period in this case by one day.

If claimant is able to establish good cause for her late filing, claimant must next show that she had good cause for missing the November 10th hearing. Claimant missed the hearing because her mother became ill and was taken to the hospital, diagnosed with a terminal illness expected to take her life within a few days, and passed away all within a week of the scheduled hearing in this matter. DR Exhibit 5. The sudden catastrophic illness of a relative, coupled with a party's need to provide care or make decisions for that relative, might, under certain circumstances, constitute good cause for reopening a hearing. In order to determine whether good cause exists, however, the party must provide specific details about the onset dates and activities of the party that prevented the party from either appearing at the hearing at the scheduled date and time or requesting a postponement of the hearing.

In this case, for example, the record shows claimant's address in Oregon City, but the hospital to which claimant's mother was taken upon becoming ill was located in Springfield, Oregon.² However, the record fails to show where claimant was during the relevant period of time, whether claimant received the notice of hearing, when she became aware that a hearing was scheduled, when her mother was hospitalized, whether and when claimant's mother was released from the hospital, what responsibilities claimant had with respect to caring for her mother during the relevant period of time, whether claimant was capable of attending to her own personal business during that period of time (*e.g.* calling in absences to a job, paying bills, collecting and opening mail), whether claimant had anyone monitoring her mail or handling personal business on her behalf during that period of time, whether she had the opportunity to request that the hearing be postponed, and when she became aware that a hearing was scheduled or that she had missed the hearing. Because the record lacks any details about claimant's mother's illness or claimant's own activities during the period in question, the record fails to show whether or not claimant's failure to appear at the November 10th hearing or request postponement was the result of factors beyond her control or an excusable mistake.

Although the laws and rules concerning requests to reopen and late requests to reopen allow the ALJ to reach a decision on both of those issues on the basis of a party's written statement alone, the rules also

for the late filing *and* shown good cause for failing to appear at the November 10th hearing. If claimant cannot show good cause for the late filing and for her failure to appear, the administrative decision concluding she did not have good cause for quitting her job with The Home Depot is considered final, and claimant will not have the opportunity to present evidence about the work separation or try to prove that she should receive unemployment benefits because of this work separation.

² We take notice of the location of McKenzie-Willamette Medical Center, a generally cognizable fact. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

permit the ALJ to conduct a hearing when the written information is incomplete. *See* OAR 471-041-0040; OAR 471-041-0041. Whether deciding a case based on written materials or testimony, however, 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 record was not developed sufficiently to determine whether claimant's late filing and/or failure to appear were the result of factors beyond her control or excusable mistake(s), Hearing Decision 14-UI-30477 is reversed, and this matter is remanded for development of the record.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 14-UI-30477 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.

DECISION: Hearing Decision 14-UI-30477 is set aside, and this matter remanded for additional evidence consistent with this order.

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

DATE of Service: January 6, 2015

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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