

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0053

Reversed & Remanded

PROCEDURAL HISTORY: On November 25, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 120223) concluding that claimant was not able to work from September 14 through November 22, 2014 (weeks 38-14 through 47-14). Claimant filed a timely request for hearing. On January 5, 2015, ALJ Triana conducted a hearing, and on January 13, 2015, issued Hearing Decision 15-UI-31757, concluding that claimant was not available for work from September 14 through September 27, 2014 (weeks 38-14 through 39-14) and from October 12 through November 22, 2014 (42-14 through 47-14), but was available for and able to work from September 28 through October 11, 2014 (weeks 40-14 through 41-14). On January 20, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSION AND REASONS: Hearing Decision 15-UI-31757 should be reversed, and this matter remanded for additional proceedings consistent with this order.

This matter comes before us to determine whether claimant is eligible to receive unemployment insurance benefits during the period at issue, September 14 through November 22, 2014 (weeks 38-14 through 47-14). ORS 657.270 requires that the ALJ give all parties a reasonable opportunity for a fair hearing, however. That obligation necessarily requires that the ALJ 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).

At the hearing, the Department's representative testified that claimant was not available for all suitable work opportunities during the period at issue because, as a result of injuries received in a September 11, 2014 car accident, she could only work four hours a day. Transcript at 6. Claimant asserted that she had various restrictions on her ability to work during the period at issue, but the record is not clear as to what these restrictions were, when they were imposed, and for how long. Claimant testified that on September 14, 2014, she visited the emergency room and that the health care provider she consulted during this visit imposed some restrictions on her ability to work. Claimant referred to a note from the health care provider that she claimed had been submitted as evidence. Transcript at 16. No such note is part of the

record, however, and the ALJ failed to inquire about specific restrictions imposed on claimant by the health care provider. Claimant testified that she was able to work full time during the week of September 14 through September 20, 2014 (week 38-14), because on September 16, a health care provider found her able to no longer than 8 hours at a time and required that she sit down during her work. Transcript at 16; Exhibit 1. The record is unclear as to how long this restriction was in effect, however. Claimant testified that on September 22, 2014, she consulted a health care provider at an urgent care facility. Transcript at 22. The ALJ did not ask about the results of this visit and did not inquire what restrictions, if any, were imposed on claimant's ability to work.

The final evidence in the record concerning claimant's availability for and ability to work during the period at issue is a health care provider's note from claimant's October 16, 2014 visit to an urgent care facility. In this note, the health care provide restricted claimant to working four hour shifts from October 16 through October 28, 2014, and also imposed a number of limitations on claimant's physical activities. Exhibit 1. The ALJ failed to ask what restrictions or limitations claimant had on her ability to work during the remainder of the period at issue – from October 28 through November 22, 2014.¹

For the above reasons, a more complete inquiry is needed into the details of claimant's ability to work during the period at issue – from September 14 through November 22, 2014 (weeks 38-14 through 47-14). Hearing Decision 15-UI-31757 is reversed as unsupported by a complete record, and the matter 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-30929 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 15-UI-31757 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: February 27, 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.

¹ In Hearing Decision 15-UI-31757, the ALJ concluded that claimant was not available for work during the week of September 14 through September 20, 2014 (week 38-14), because she missed an opportunity to work on September 16 when she left work 15 minutes early. Hearing Decision 15-UI-1757 at 6. Claimant initially testified that she left work early on September 16, but then testified that she actually left early on October 16. Transcript at 23. The ALJ must clarify this fact on remand.

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