

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0272

Reversed & Remanded

PROCEDURAL HISTORY: On November 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (#142941) concluding that claimant did not actively seek work from September 28 through November 15, 2014 (weeks 40-14 through 46-14). On December 16, 2014, decision # 142941 became final without a request for hearing having been filed. On January 6, 2015, claimant filed an untimely request for hearing. On February 10 and 26, 2015, ALJ Murdock conducted a hearing, and on March 2, 2015, issued Hearing Decision 15-UI-34371, dismissing claimant’s request for hearing. On March 10, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSION AND REASONS: Hearing Decision 15-UI-34371 should be reversed, and this matter remanded for additional proceedings consistent with this order.

ORS 657.270 requires that the ALJ give all parties a reasonable opportunity for a fair hearing. This 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).

The ALJ was presented with two issues in this case – (1) whether claimant filed a timely request for hearing, and if not, whether she demonstrated good cause for failing to do so; and (2) whether claimant was eligible to receive benefits for the period from September 28 through November 15, 2014. Because the ALJ concluded that claimant’s request for hearing was untimely and that she had not demonstrated good cause for filing a late request, the ALJ dismissed claimant’s hearing request and did not consider the second issue – claimant’s eligibility for benefits.

At the hearing, claimant testified that she first learned about the November 26, 2014 decision in January 2015, when she was notified that she had been overpaid benefits. She further testified that at times, she has received “mail which is three months” old from friends who are neighbors. Transcript of the 02/10/15 hearing at 9. The ALJ failed to inquire further about specific difficulties claimant may have experienced with her mail that could possibly have delayed claimant’s receipt of decision #142941, or

prevented her from receiving this decision. Claimant also testified that “she had surgery on her leg and she couldn’t even take care of her own children.” Transcript of the 02/26/15 hearing at 6. When the ALJ attempted to ask claimant for additional details about the surgery, she had difficulty in getting claimant to understand or respond to her questions. The ALJ then asked if claimant was “having any problems with the interpretation or of [the interpreter] cooperating with us? Are you having any problems with him?” The claimant responded that she did not understand the interpreter well. Transcript of the 02/26/15 hearing at 9.

A more complete inquiry is needed into circumstances that may have prevented claimant from filing a timely request for a hearing on the administrative decision at issue – problems with the mail and health issues related to surgery. In order to make such an inquiry, we note that it will be necessary for the ALJ to make sure that claimant and the interpreter employed are able understand one another.

Hearing Decision 15-UI-34371 is reversed as unsupported by a complete record, and the matter remanded for further 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-34371 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: March 25, 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 Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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