

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0490**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On January 13, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work because she failed to provide the Department with proof that she was authorized to work lawfully in the United States (decision # 94258). On January 20, 2015, claimant submitted a request for hearing on decision # 94258 to the Office of Administrative Hearings (OAH). On January 28, 2015, the Department served notice of a decision concluding that claimant voluntarily left work without good cause (decision # 112248). On February 2, 2015, OAH issued notice of a hearing scheduled for February 17, 2015 at 2:30 p.m.

On February 17, 2015, claimant received decision # 112248; that decision also became final on this date because a request for hearing was not filed. Transcript at 15. Also on February 17, 2015, the Department served notice of an administrative decision (# 94435) concluding that new information showed that claimant was authorized to work lawfully in the United States, but that payment would not be processed because of decision #112248. Also on February 17, 2015, at 10 a.m., an OAH employee called claimant and told her the hearing scheduled for 2:30 p.m. was cancelled. Claimant, who has limited English proficiency, understood that “everything was dismissed and then I am eligible for unemployment.” Transcript at 20. On February 17, 2015, ALJ Seideman issued Hearing Decision 15-UI-33604 dismissing claimant’s request for hearing on decision # 94258.

On March 2, 2015, claimant contacted the Department regarding her benefits and was told that she needed to request a hearing on decision # 112248, the voluntary quit decision. Transcript at 12. On March 11, 2015, ALJ Kangas issued Hearing Decision 15-UI-34947, dismissing claimant’s request for

hearing as untimely, subject to claimant's "right to renew" the request by submitting responses to the "Appellant Questionnaire" attached to the hearing decision within 14 days of the date the decision was mailed.<sup>1</sup> On March 17, 2015, OAH received claimant's response. On March 24, 2015, OAH issued a "Cancellation of Hearing Decision" for Hearing Decision 15-UI-34947. On April 8, 2015, ALJ Triana conducted an interpreted hearing and on April 13, 2015 issued Hearing Decision 15-UI-36764, re-dismissing claimant's late request for hearing. On April 27, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**CONCLUSION AND REASONS:** We disagree with the ALJ and conclude that claimant had good cause for filing a late request for hearing on decision # 112248, the voluntary quit decision.

A request for hearing on an administrative decision must be filed on within 20 days of the date on which the decision was mailed unless an applicant demonstrates "good cause" for extending this deadline. ORS 657.269(2) and ORS 657.875. "Good cause" exists if "an action, delay, or failure to act arises from an excusable mistake or from facts beyond an applicant's reasonable control." OAR 471-040-0010(1) (February 10, 2012).

Here, claimant did not file a timely request for hearing on the voluntary quit decision because of a mistake. After claimant spoke with an OAH staff member on February 17, claimant believed that both administrative decisions – the voluntary quit decision (#11248) and the availability for work decision (#94258) – had been reversed and that no barriers existed to her receipt of unemployment benefits. The situation claimant faced on February 17, in which she was told that one decision would now allow her to receive unemployment benefits but had just received another decision that denied her these benefits, was sufficiently confusing to baffle even a fluent English speaker, which claimant is not. Given these circumstances, claimant's error in failing to realize on February 17 that she needed to request a hearing on the voluntary quit decision was an excusable mistake.

Because claimant has demonstrated good cause for filing a late hearing request, her request is granted. This matter is remanded to OAH for a hearing on the merits of claimant's hearing request.

**DECISION:** Hearing Decision 15-UI-36764 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service:** May 8, 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](http://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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<sup>1</sup> Hearing Decision 15-UI-32545.

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