

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0781

Reversed & Remanded

PROCEDURAL HISTORY: On March 27, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 114930). On April 16, 2015, decision # 114930 became final without a request for hearing having been filed. On May 29, 2015, claimant filed a late request for hearing. On June 8, 2015, ALJ Kangas issued Hearing Decision 15-UI-39676, dismissing claimant's request for hearing subject to his right to renew his request by returning a completed "Appellant Questionnaire" to the Office of Administrative Hearings (OAH) by June 22, 2015. On June 12, 2015, OAH received claimant's response. On June 25, 2015, ALJ Kangas issued Hearing Decision 15-UI-40674, re-dismissing claimant's request for hearing. On June 30, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 15-UI-40674 should be reversed, and this matter should be remanded for additional information.

ORS 657.269 provides that administrative decisions are final unless a request for hearing is filed within 20 days after notice of the decision was mailed. ORS 657.875 provides that the 20-day deadline may be extended a reasonable time upon a showing of good cause. "Good cause" is "when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control," and a "reasonable time" is "seven days after the circumstances that prevented a timely filing ceased to exist." OAR 471-040-0010 (February 10, 2012). OAR 471-040-0010 further states that the person filing a late request for hearing "shall set forth the reason(s) for filing a late request for hearing in a written statement" that is then considered in determining whether good cause exists and whether the request was filed within a reasonable time, but nothing in the rule that requires the written statement be provided "prevents the OAH from scheduling a hearing if in the sole judgment of the OAH testimony is required."

Claimant filed a late request for hearing because he was incarcerated in the Baker County Jail from March 19, 2015, which was before decision # 114930 was issued, until May 12, 2015, which was after decision # 114930 became final. He filed his request for hearing on May 29th because he "Finally found

out what I needed to do from Employment Dept." *See* Claimant's response at 2. The ALJ reasoned that, because claimant "did not provide any information why he was incarcerated or why he waited until May 29, 2015 . . . to file his hearing request," he did not show good cause for the late request. Hearing Decision 15-UI-40674 at 2. We disagree, and conclude that additional information is required.

In this case, claimant's written statement established that he was unable to receive or respond to mail directed to him during the entire appeal period, and filed his request for hearing as soon as he learned he needed to do so. He was never asked by OAH to explain why he was incarcerated, never told that his explanation – that he waited until May 29th to file his request because that's when he "found out" he needed to request a hearing -- would be considered inadequate, and never told that failing to offer that information would result in the dismissal of his hearing request. We think the information claimant provided in his written statement tends to suggest that circumstances outside claimant's control may have prevented a timely filing and raises a substantial question whether claimant's untimely filing occurred within 7 days after those circumstances ceased to exist, thus establishing facts that warrant further development. The ALJ abused her discretion in dismissing claimant's request for hearing without a hearing.

DECISION: Hearing Decision 15-UI-40674 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter, J. S. Cromwell and D. P. Hettle, *pro tempore*.

DATE of Service: July 7, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.