

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0982

Reversed & Remanded

PROCEDURAL HISTORY: On September 19, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant is ineligible for benefits for the week of August 31 through September 6, 2014 because claimant did not complete registration in the Department's iMatchSkills® system and/or an individual review at a Department WorkSource Center. On October 9, 2014, the Department's decision became final without a request for hearing having been filed. On July 23, 2015, claimant filed, by telephone, a late request for hearing on the Department's decision. On July 29, 2015, ALJ Kangas issued Hearing Decision 15-UI-42210, dismissing claimant's late request for hearing, subject to claimant's right to renew the request by returning an appellant questionnaire within 14 days of the date on which the decision was mailed. On August 7, 2015, the Office of Administrative Hearings (OAH) received claimant's timely response to the appellant questionnaire. ALJ Kangas reviewed claimant's response, and on August 12, 2015 issued Hearing Decision 15-UI-42901, re-dismissing claimant's late request for hearing. On August 18, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Hearing Decision 15-UI-42901 is reversed, and this matter remanded to OAH for a hearing on whether claimant's late request for hearing should be allowed and, if so, whether claimant is ineligible for benefits for the week of August 31 through September 6, 2015.

To be timely, claimant's request for hearing on the Department's September 19, 2014 administrative decision had to be filed on or before October 9, 2014. ORS 657.269(2). Claimant filed her request for hearing on July 23, 2015, and her request therefore was late. However, ORS 657.875 provides that the period for filing a request for hearing may be extended, upon a showing of good cause therefor, a reasonable time. "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control, and does not include not understanding the implications of a decision when it is received. OAR 471-040-0010 (February 10, 2012). "A reasonable time," is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0010(3).

In Hearing Decision 15-UI-42901, the ALJ concluded that claimant filed her late request for hearing without good cause based on a finding that claimant filed the request late because "she did not think she

had to go to one of the Employment Department's WorkSource centers."¹ We disagree with that finding. At the end of claimant's responses to the appellant questionnaire, claimant stated that she did not understand the questionnaire.² That statement is supported by claimant's responses that she filed her request for hearing on the Department's decision by mail on July 24, 2015,³ (although the record shows she filed her request by telephone on July 23, 2015),⁴ but did not receive that decision until July 29, 2015,⁵ the date on which ALJ Kangas issued Hearing Decision 15-UI-42210, dismissing claimant's late request for hearing on the Department's decision, subject to claimant's right to renew the request by returning the appellant questionnaire.

Claimant's response to the question asking her to explain why she did not file her request for hearing on time, that she did not think she had to go to WorkSource because she was not getting cash and was paying back penalty weeks,⁶ similarly makes no sense. We infer from the response that claimant misunderstood the questions and was addressing the merits of the Department's decision concluding that she was ineligible for benefits because she did not complete registration in the Department's iMatchSkills® system and/or an individual review at a WorkSource Center, and not explaining why she did not file her request for hearing on the decision on time. The record therefore fails to show why claimant failed to file her request for hearing until July 23, 2015, or therefore whether she had good cause for failing to do so. Hearing Decision 15-UI-42901 therefore is reversed as unsupported by the record, and this matter remanded to OAH for a hearing on whether claimant's late request for hearing should be allowed and, if so, whether claimant is ineligible for benefits for the week of August 31 through September 6, 2015.

DECISION: Hearing Decision 15-UI-42901 is set aside, and this matter remanded for further proceedings consistent with this order.

J. S. Cromwell and D. P. Hettle, *pro tempore*;
Susan Rossiter, not participating.

DATE of Service: August 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.

¹ Hearing Decision 15-UI-42901 at 2.

² Exhibit 3 at 3.

³ *Id.* at 2.

⁴ Exhibit 2.

⁵ Exhibit 3 at 2.

⁶ *Id.*

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.