

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1456

Reversed
Late Request for Hearing Allowed

PROCEDURAL HISTORY: On August 25, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 150928). On September 14, 2015, decision # 150928 became final, without a request for hearing having been filed. On September 16, 2015, claimant filed an untimely request for hearing. On September 29, 2015, ALJ Kangas issued Hearing Decision 15-UI-45073, dismissing claimant's hearing request subject to his right to renew the request by responding to an appellant questionnaire within 14 days. Claimant timely responded to the appellant questionnaire. By letter dated October 23, 2015, the Office of Administrative Hearings (OAH) cancelled Hearing Decision 15-UI-45073. On November 9, 2015, ALJ McGorin conducted a hearing and on November 17, 2015, issued Hearing Decision 15-UI-47784, dismissing claimant's hearing request as untimely. On December 7, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

In his written argument, claimant's representative provided new information in support of his contention that claimant demonstrated good cause for filing an untimely hearing request; this information was not presented at the hearing. Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information if the party presenting the information demonstrates that circumstances beyond its reasonable control prevented the party from offering the information at the hearing. Because we have concluded that claimant demonstrated good cause for filing an untimely hearing request, and have remanded this case to the OAH for a hearing on the merits of claimant's hearing request, it is unnecessary for us to determine whether we should consider this new information under the standard provided by OAR 471-041-0090.

FINDINGS OF FACT: (1) In July 2015, claimant began suffering from high blood pressure. By the middle of August 2015, his high blood pressure caused him to have uncontrollable headaches, pressure in his head, pounding in his heart, sweating, and general weakness. Audio Recording at 21:41 and 22:49. Because of the severity of these symptoms, claimant spent a great deal of time in bed and was unable to perform basic activities such as paying his bills. Audio Recording at 14:39, 37:06. Claimant did not seek medical attention for his condition because he believed the symptoms might go away; in addition, claimant had no health insurance and could not afford to pay for medical care.

(2) On August 25, 2015, the Department sent claimant administrative decision # 150928, which concluded that Twin Peaks Retirement, the employer, discharged claimant for misconduct.

(3) Claimant received decision # 150928 a few days the Department mailed it to him. Because of the symptoms of his high blood pressure he was experiencing, claimant was “in a fog” at the time he received the decision, and did not promptly open the envelope in which the decision was mailed and read the decision. Audio Recording at 29:37.

(4) In early September 2015, claimant read decision # 150928, but did not understand it; he thought his unemployment benefits would be delayed because he received vacation and severance pay when he separated from employment with Twin Peaks Retirement. Audio Recording at 8:15. On September 15, 2015, contacted a Department representative. Claimant told the representative he did not understand decision # 150928 and asked the representative about the status of his unemployment benefits. The representative explained that the decision denied him benefits, and that he could file a request for hearing on the decision if he disagreed with it. Audio Recording at 33:34.

(5) On September 16, 2015, claimant mailed a request for hearing on decision # 150928 to the OAH.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that claimant has shown good cause for filing a late hearing request. Claimant is entitled to a hearing on the merits of decision # 150928.

Under ORS 657.269, a Department decision becomes final unless a request for hearing is filed within 20 days after the date the decision was mailed to a party’s last known address. This 20-day time limit may be extended a reasonable time upon a showing of good cause. ORS 657.875. “Good cause” exists when a party’s failure to timely file results from an excusable mistake or from factors beyond the party’s reasonable control. OAR 471-040-0010(1) (February 10, 2012). A “reasonable time” is defined as seven days after the circumstances that prevented a timely filing cease to exist. OAR 471-040-0010(3).

In Hearing Decision 15-UI-47784, the ALJ concluded that claimant failed to meet his burden to demonstrate that his failure to timely file his hearing request resulted from an excusable mistake or factors beyond claimant’s reasonable control. The ALJ found that claimant received the decision a few days after it was mailed, and “understood from reading the decision that he had until September 14, 2015 to request an appeal.” Hearing Decision 15-UI-47784 at 1. The ALJ determined that although claimant was suffering from high blood pressure at the time he received decision # 150928, he

“was able to open and read documents, and drive. As a result, he was able to request a hearing either in writing or by telephone to the Department. When he contacted the

Department the day after the deadline for the hearing request, claimant indicated that he had not understood the administrative decision was final. However, the decision unequivocally stated that a hearing must be requested by September 14, 2015." Hearing Decision 15-UI-47784 at 3.

The ALJ's conclusion is not supported by the evidence in the record. Contrary to the ALJ's finding of fact, claimant did not understand the decision when he read it and contacted the Department for clarification. Audio Recording at 8:15. At the time claimant received decision # 150928, he was experiencing severe symptoms resulting from untreated high blood pressure. These symptoms impaired claimant's ability to perform basic tasks, such as paying his bills, forced him to remain in bed for a great deal of time, and more likely than not, prevented him from promptly opening the envelope in which decision # 150928 was mailed, reading the decision, and understanding it. We therefore conclude that claimant's failure to file a timely hearing request resulted from circumstances beyond his control -- his high blood pressure. Claimant therefore demonstrated good cause for filing an untimely hearing request. Claimant filed his late hearing request on decision # 150928 within a reasonable time as defined by OAR 471-040-0010(3), *i.e.*, one day after the Department representative explained the significance of the decision to him on September 15, 2015.

Claimant's late request for hearing is allowed. He is entitled to a hearing on the merits of decision # 150928.

DECISION: Hearing Decision 15-UI-47784 is set aside, as outlined above.

Susan Rossiter and J. S. Cromwell

DATE of Service: December 10, 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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