

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0067

Reversed & Remanded

PROCEDURAL HISTORY: On October 29, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$22,431 overpayment, \$6,729.30 monetary penalty and 52 penalty weeks (hereinafter referred to as "the overpayment decision"). On November 18, 2015, the overpayment decision became final without claimant having filed a timely request for hearing. On November 19, 2015, claimant filed a late request for hearing. On December 1, 2015, ALJ Kangas issued Hearing Decision 15-UI-48537, dismissing claimant's late request for hearing subject to her right to renew the request by responding to an appellant questionnaire by December 15, 2015. On December 14, 2015, claimant filed her response by mail. On December 29, 2015, ALJ Kangas reviewed claimant's questionnaire response and issued Hearing Decision 15-UI-50109, re-dismissing claimant's late request for hearing on the overpayment decision. On January 15, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

In claimant's written argument, claimant provided new information about the reason she filed a late request for hearing on the overpayment decision, specifically, that she has a learning disability that, in essence, affected her ability to timely file a request a hearing. OAR 471-041-0090(2) (October 29, 2006) provides that EAB may consider a party's new evidence if the information is relevant and material to EAB's determination and factors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing. Here, claimant's learning disability may have had an effect on her ability to meet deadlines, submit a request for hearing and understand hearing procedures, making that information relevant and material to a determination of whether she had good cause for missing a deadline. We conclude that it is more likely than not that circumstances beyond her reasonable control prevented her from presenting the information earlier because, on this record, she has never been asked whether she has a learning disability, and, according to claimant's

argument, needs help to participate in the hearing process in light of her learning disability. Therefore, EAB may consider claimant's new information.

However, although claimant identified in her argument that she has a learning disability, claimant did not explain what her learning disability is, how she is affected by it, or how her learning disability affected her ability to file a timely request for hearing in this matter. Therefore, additional information is necessary before we can determine whether or not claimant had good cause for filing her late request for hearing on the overpayment decision by reason of her learning disability, and we must remand this matter to OAH for a hearing and decision on those issues. Should the ALJ determine on remand that claimant had good cause for the late filing, a hearing on the overpayment decision should also be scheduled and held.

DECISION: Hearing Decision 15-UI-50109 is set aside, and this matter remanded for further proceedings consistent with this order.¹

Susan Rossiter and J. S. Cromwell

DATE of Service: January 21, 2016

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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¹ **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 15-UI-50109 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.