

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0087

Reversed & Remanded

PROCEDURAL HISTORY: On September 10, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 83102). On September 11, 2015, the Department served notice of an administrative decision (# 194040) that assessed a \$1,920 overpayment, a \$288 monetary penalty and 18 penalty weeks based pm decision # 83102. Claimant filed timely requests for hearing on both decisions; in each hearing request, claimant indicated that he wanted an interpreter in the Somali language. On October 7, 2015, the Office of Administrative Hearings issued notice of hearings scheduled for October 21, 2015. On October 22, 2015, ALJ Frank issued the following hearing decisions, dismissing claimant's hearing requests for claimant's failure to appear at the October 21 hearings: Hearing Decision 16-UI-46334 dismissed claimant's request for hearing on decision # 194040, and Hearing Decision 15-UI-46335 dismissed claimant's request for hearing on decision # 83102. On November 12, 2015, both hearing decisions became final without applications for review or requests to reopen having been filed.

On January 6, 2015, claimant filed untimely requests to reopen both hearing decisions. On January 20, 2016, ALJ Kangas issued the following hearing decisions, dismissing claimant's requests concluding that, dismissing claimant's requests to reopen as untimely: Hearing Decision 16-UI-51360 dismissed claimant's request to reopen the hearing on decision # 194040, and Hearing Decision 16-UI-51361 dismissed claimant's request to reopen the hearing on decision # 83102. On January 25, 2016, claimant filed applications for review of both hearing decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-51360 and 16-UI-51361. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0087 and 2016-EAB-0088).

CONCLUSION AND REASONS: Hearing Decisions 16-UI-51360 and 16-UI-51361 are reversed, and these matters remanded for further development of the record.

An ALJ may reopen a hearing if the party requesting the reopening failed to appear at the hearing, files a request to reopen the hearing within 20 days of the date on which the hearing decision was mailed, and demonstrates good cause for failing to appear at the hearing. OAR 471-040-0040 (February 10, 2012). The 20 day time limit for filing a request to reopen may be extended if the party requesting reopening shows good cause for failing to timely request reopening, and acts to request reopening within a reasonable time. OAR 471-040-0041 (February 10, 2012). In Hearing Decisions 15-UI-51360 and 16-UI-51361, the ALJ dismissed claimant's requests to reopen as untimely, concluding that he provided no explanation why his requests were not filed within the 20 days of the date on which the hearing decisions were mailed. We conclude that additional evidence is needed to determine if claimant had good cause for filing untimely requests to reopen.

Under ORS 657.270, an ALJ is obligated to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires that the ALJ ensure that the record developed shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d (1986). When a party has limited proficiency in English, the ALJ's obligation make a full and fair inquiry into the relevant facts includes the obligation to provide the party with an interpreter.¹ Here, claimant indicated in his hearing request that he needed an interpreter in the Somali language. His request to reopen demonstrates that his proficiency in English is limited. To make a full a fair inquiry into the facts necessary to determine if he had good cause to file an untimely request to reopen, the ALJ must conduct a hearing in which claimant is provided with the services of an interpreter in the Somali language. The issue for this hearing will be whether claimant had good cause for filing late requests to reopen; if the ALJ determines that the claimant has shown good cause for these late requests, the ALJ must then conduct hearings to determine if claimant had good cause for reopening his hearings. If the ALJ concludes that claimant has demonstrated good cause for reopening, the ALJ will then conduct hearings on the merits of claimant's hearing requests.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decisions 16-UI-51360 and 16-UI-51361 or return these matters to EAB. Only timely applications for review of the subsequent hearing decisions will cause these matters to return to EAB.

DECISION: Hearing Decisions 16-UI-51360 and 16-UI-51361 are set aside, and these matters remanded for further proceedings consistent with these orders.

Susan Rossiter and J. S. Cromwell

DATE of Service: January 28, 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

¹ OAR 471-040-0007(7)(a) (March 5, 2006) states: "If, at any time of or during the contested case proceedings, it becomes apparent that an interpreter is necessary for a full and fair inquiry, the administrative law judge shall arrange for an interpreter and may postpone the proceedings if necessary." *See also Leung v. Employment Department*, 266 Or App 795, 804, 340 P3d 62 (2014) (states have an obligation to provide meaningful access to their unemployment insurance programs to individuals with limited English proficiency).

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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