

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0237

*Late Application for Review Allowed
Reversed & Remanded*

PROCEDURAL HISTORY: On October 20, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 90446). Claimant filed a timely request for hearing. On December 31, 2015, the Office of Administrative Hearings issued notice of a hearing scheduled for January 15, 2016. On January 15, 2016, ALJ Logan issued Hearing Decision 16-UI-51237, dismissing claimant's hearing request for failure to appear at the hearing. Claimant filed a timely request to reopen. On February 9, 2016, ALJ Kangas issued Hearing Decision 16-UI-52623, denying claimant's request to reopen. Hearing Decision 16-UI-52623 became final on February 29, 2016, without an application for review having been filed with the Employment Appeals Board (EAB). On March 1, 2016, claimant filed an untimely application for review with EAB.

LATE APPLICATION FOR REVIEW: OAR 657.270(6) and (7) required that claimant's application for review be filed on or before February 29, 2016; claimant filed her application for review on March 1, 2016. Under OAR 471-041-0070(2) (March 20, 2012), the period for filing an application for review may be extended a reasonable time upon a showing of "good cause." "Good cause" exists if an applicant demonstrates that "factors or circumstances beyond the applicant's reasonable control prevented timely filing." OAR 471-041-0070(2)(a). In her application for review, claimant stated that she suffers from numerous health conditions, and that because of these conditions, she is "unable to completely focus and in some cases misunderstand what is written or said to me." The conditions from which claimant currently suffers are: ADHD, dyslexia, gastritis, depression and generalized anxiety. In addition, claimant explained that she is being evaluated for possible additional health problems. The health conditions which impair claimant's ability to read and understand materials constitute circumstances beyond her reasonable control that prevented timely filing of her application for review. The late application for review is therefore allowed.

REQUEST TO REOPEN: Under OAR 471-040-0040, a party who fails to appear at a hearing may request reopening; reopening may be granted if the ALJ determines that the party had good cause for failing to appear at the hearing. Good cause exists if the party's failure to appear arose from an excusable mistake or from factors beyond the party's reasonable control. OAR 471-040-0040(1) and (2) (February 10, 2012). Based on the explanation claimant provided in support of her late application for review, we conclude that claimant's health conditions may have constituted a circumstance beyond her reasonable control that adversely affected her ability to understand the notice she received for the January 15, 2016 hearing and may have prevented her from participating in the hearing. Further development of the record is necessary to determine if this is the case, however. We therefore remand this matter to the ALJ to conduct a hearing to develop a record on the reasons why claimant did not appear at the January 15, 2016 hearing. In particular, the ALJ must question claimant about the health conditions from which she suffered at the time she received the hearing notice, and ask what impact those conditions had on her ability to understand the notice she received for the hearing.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires development of a record that 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 12 (1986). In order to develop a record necessary to determine whether claimant had good cause for failing to appear at the January 15 hearing, Hearing Decision 16-UI-52623 is reversed, and this matter is remanded for development of the record.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-52623 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.

DECISION: Hearing Decision 16-UI-52623 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: March 7, 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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