

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0897

Reversed & Remanded

PROCEDURAL HISTORY: On May 3, 2016, the Oregon Employment Department (the Department) served notice of administrative decisions # 154623 and #152320; each found that claimant failed to accept a different suitable work assignment on March 11, 2016. On May 24, 2016, the decisions became final without timely requests for hearing having been filed. On July 1, 2016, claimant filed untimely requests for hearing. On July 11, 2016, ALJ Kangas issued Hearing Decisions 16-UI-63480 and 16-UI-63485, dismissing claimant's late requests for hearing subject to his right to renew the requests by responding to appellant questionnaires by July 25, 2016. On July 29, 2016, claimant responded to the appellant questionnaires and filed timely applications for review with the Employment Appeals Board (EAB). On August 2, 2016, the Office of Administrative Hearings (OAH) notified claimant that OAH would not consider his appellant questionnaires because they were late, and that Hearing Decisions 16-UI-63480 and 16-UI-63485 remained undisturbed.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-63480 and 16-UI-63485. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0895 and 2016-EAB-0897).

EVIDENTIARY MATTER: For purposes of EAB's review in this matter, claimant's appellant questionnaires constitute "[e]xhibit[s] offered, but not received into evidence," which EAB may "receive[]" into evidence as necessary to complete the record." OAR 471-041-0090(1) (October 29, 2006). The appellant questionnaires are therefore marked as EAB Exhibits 1, and EAB Exhibit 1 is admitted into the record in each case.

CONCLUSIONS AND REASONS: Hearing Decisions 16-UI-63480 and 16-UI-63485 are reversed, and these matters remanded.

EAB Exhibit 1 and Department records suggest the possibility that on or before May 24, 2016, claimant contacted the Department and attempted to file a request for hearing. These materials therefore indicate that claimant may have timely filed hearing requests, but the record is insufficiently developed to allow for such a determination. ORS 657.270 requires the ALJ to give the parties a reasonable opportunity for a fair hearing, and 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. *See accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). On remand, the ALJ must develop a record sufficient to determine if claimant contacted the Department on or before to May 24, and if so, whether claimant requested a hearing or otherwise expressed “a present intent to appeal” the May 3 administrative decisions during these contacts. *See* OAR 471-040-0005(1) (July 14, 2011) (a party is not required to use a Department form to request a hearing, “provided the party specifically requests a hearing or otherwise expresses a present intent to appeal.”) If claimant establishes that he made timely hearing requests or demonstrates good cause for late hearing requests, the ALJ must then address the issue of claimant’s job refusals.

DECISION: Hearing Decisions 16-UI-63480 and 16-UI-63485 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: August 8, 2016

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decisions 16-UI-63480 and 16-UI-63485 or return these matters to EAB. Only timely applications for review of any subsequent hearing decisions will cause these matters to return to EAB.

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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