

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0930

Reversed & Remanded

PROCEDURAL HISTORY: On July 21, 2010, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause. On July 22, 2010, the Department served notice of an administrative decision assessing a \$5,877 overpayment and 46 penalty weeks based on the voluntary quit decision. Claimant requested hearings on both decisions. On September 10, 2010, the Office of Administrative Hearings (OAH) issued notice of hearings scheduled for September 22, 2010. On September 22, 2010, ALJ Clink issued Hearing Decisions 10-UIB-24251-D and 10-UIB-24283-D, dismissing claimant's hearing requests for failure to appear. On October 12, 2010, these hearing decisions became final without requests to reopen or applications for review having been filed.

On July 7, 2016, claimant filed requests to reopen. On July 26, 2016, ALJ Kangas issued the following hearing decisions: Hearing Decision 16-UI-64450 dismissed claimant's request to reopen the hearing on the voluntary quit decision as untimely, and Hearing Decision 16-UI-64453 dismissed claimant's request to reopen the hearing on the overpayment decision as untimely. On August 10, 2016, claimant filed applications for review with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-64450 and 16-UI-64453. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0930 and 2016-EAB-0932).

ORS 657.270(5) provides that a hearing may be reopened upon request of any party that failed to appear at the hearing if the party requests reopening within 20 days of the date on which the hearing decision was mailed, and the party shows good cause for failing to appear. OAR 471-040-0040 (February 10, 2012). "Good cause" for reopening means an excusable mistake or factors beyond the party's reasonable control. OAR 471-040-0040 (2). The period within which a party may request reopening may be extended if the requesting party demonstrates "good cause" for failing to appear, and "acts within a reasonable time." OAR 471-040-0041(1) (February 10, 2012).

The ALJ based the conclusions in Hearing Decisions 16-UI-64450 and 16-UI-64453 that claimant did not show good cause for his late requests to reopen on the premise that claimant's "request includes no

explanation of why he did not file the reopening request within the 20 days allowed." In his requests to reopen, however, claimant stated that he was unable to make the hearings because "I was sentenced to nearly 2 years in prison at the time that I set up the hearing in 2010," suggesting that he might have been prevented by factors beyond his control from filing timely requests, and suggesting that good cause might exist. Additional evidence is necessary to determine whether this is the case, and, if so, whether he acted within a reasonable time after the circumstances preventing a timely filing ceased to exist. These matters are therefore remanded to the OAH so that the ALJ can conduct an inquiry sufficient to determine if claimant had good cause for filing untimely requests to reopen. *See* ORS 657.270 (the ALJ's obligation to give all parties a reasonable opportunity for a fair hearing requires that the ALJ develop a record that shows a full and fair inquiry into the issues; *accord Dennis v. Employment Division*, 302 OR 160, 728 P2d 12 (1986). If the ALJ determines that claimant had good cause for filing untimely requests to reopen, the ALJ must then determine whether claimant had good cause for his failure to appear at the 2010 hearings.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decisions 16-UI-64450 and 16-UI-64453 or return these matters to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

DECISION: Hearing Decisions 16-UI-64450 and 16-UI-64453 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 11, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.