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BYE: 201710

State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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JR 005.00
AAA 005.00
MC 010.05
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EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1337

Reversed & Remanded

PROCEDURAL HISTORY: On August 23, 2016, the Oregon Employment Department (the Department) served notice of the following four administrative decisions: decision # 124004, concluding that claimant refused an offer of work for May 5, 2016 without good cause; decision # 133641, concluding that claimant refused an offer of work for May 9, 2016 without good cause; decision # 132340, concluding that claimant refused another offer of work for May 9, 2016 without good cause; and decision # 141211, concluding that claimant missed an opportunity to work on April 21, 2016 and was therefore not available for work that week. On August 24, 2016, the Department served notice of the following two administrative decisions: decision # 85742, concluding that claimant refused an offer of work for May 12, 2016 without good cause; and decision # 143617, concluding that claimant did not actively seek work during the week of June 12, 2016 to June 18, 2016. On August 25, 2016, the Department served notice of administrative decision # 193174, concluding that claimant was overpaid \$187 because she underreported her earnings when claiming benefits weeks 18-16, 20-16, 21-16 and 24-16. On September 12, 2016, decisions # 124004, 133641, 132340 and 141211 became final without claimant having requested hearings. On September 13, 2016, decisions # 85742 and 143617 became final. On September 14, 2016, decision # 193174 became final.

On September 22, 2016, the Department served notice of the following two administrative decisions: decision # 145703, concluding that claimant was overpaid \$4708 based on the decisions concluding she had refused offers of work without good cause; and decision # 144658, concluding that claimant was overpaid \$400 based on decision # 141211. On October 12, 2016, decisions # 145703 and 144658 became final without claimant having requested hearings on either decision.

On October 26, 2016, claimant filed late requests for hearing for all nine administrative decisions. On October 31, 2016, ALJ Kangas issued the following hearing decisions, all of which dismissed claimant's late requests for hearing on the administrative decisions subject to her right to renew the requests by responding to appellant questionnaires no later than November 14, 2016: Hearing Decision 16-UI-70250 dismissed claimant's request for hearing on decision # 85742; Hearing Decision 16-UI-70255 dismissed claimant's request for hearing on decision # 124004; Hearing Decision 16-UI-70258

dismissed claimant's request for hearing on decision # 133641; Hearing Decision 16-UI-70263 dismissed claimant's request for hearing on decision # 132340; Hearing Decision 16-UI-70267 dismissed claimant's request for hearing on decision # 141211; Hearing Decision 16-UI-70251 dismissed claimant's request for hearing on decision # 193174; Hearing Decision 16-UI-70253 dismissed claimant's request for hearing on decision # 145703; Hearing Decision 16-UI-70254 dismissed claimant's request for hearing on decision # 144659; and Hearing Decision 16-UI-70265 dismissed claimant's request for hearing on decision # 143617.

On November 21, 2016, the Office of Administrative Hearings (OAH) received claimant's response to the appellant questionnaires; on November 21, 2016, claimant also filed timely applications for review of the October 31, 2016 hearing decisions with the Employment Appeals Board (EAB). On November 22, 2016, ALJ Kangas issued nine letters to claimant stating that her questionnaire responses were late and therefore would not be considered.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-70250, 16-UI-70255, 16-UI-70258, 16-UI-70263, 16-UI-70267, 16-UI-70251, 16-UI-70253, 16-UI-70254 and 16-UI-70265. For case-tracking purposes, this decision is being issued in nonuplicate (EAB Decisions 2016-EAB-1329, 2016-EAB-1330, 2016-EAB-1331, 2016-EAB-1332, 2016-EAB-1333, 2016-EAB-1334, 2016-EAB-1335, 2016-EAB-1336, and 2016-EAB-1337).

CONCLUSIONS AND REASONS Hearing Decisions 16-UI-70250, 16-UI-70255, 16-UI-70258, 16-UI-70263, 16-UI-70267, 16-UI-70251, 16-UI-70253, 16-UI-70254 and 16-UI-70265 should be reversed and these matters remanded for development of the record.

This matter is before EAB on claimant's applications for review of Hearing Decisions 16-UI-70250, 16-UI-70255, 16-UI-70258, 16-UI-70263, 16-UI-70267, 16-UI-70251, 16-UI-70253, 16-UI-70254 and 16-UI-70265, all of which dismissed claimant's late requests for hearing on decisions the Department issued in August and September 2016 as untimely, subject to her right to renew her requests by responding to appellant questionnaires no later than November 14, 2016. OAH received claimant's responses late and, as such, refused to consider their contents.

OAR 471-041-0090 provides that EAB may consider information that was not received into evidence during proceedings before OAH if the information was (1) offered but not received into evidence but is necessary to complete the record, or (2) is relevant and material to EAB's determination and factors and circumstances beyond the party's reasonable control prevented the party from previously offering the information into evidence. Claimant offered the information at issue into the record, but the ALJ reviewing claimant's case refused to admit the evidence because it was received after the deadline. Because the information claimant offered is, however, the only evidence about the issue of claimant's late requests for hearing, the information is both relevant and material to EAB's determination in this matter and necessary to complete the record. The ALJ's refusal to consider the information was a circumstance outside claimant's control. We therefore conclude that claimant's new information is admissible before EAB under OAR 417-041-0090.

ORS 657.269(2) provides that parties have 20 days after an administrative decision was mailed to request a hearing on that decision. ORS 657.875 provides that the deadline may be extended "a reasonable time" upon a showing of "good cause." OAR 471-040-0010(1) defines good cause, in

pertinent part, as an excusable mistake or factors or circumstances beyond claimant's reasonable control. OAR 471-040-0010(3) defines "a reasonable time" as "seven days after the circumstances that prevented a timely filing ceased to exist.

Claimant's questionnaire responses and subsequent written submissions to EAB suggest that she might have had good cause for the late filings, but there is insufficient evidence in the record upon which to base a conclusion and additional inquiry is necessary. ORS 657.270 requires the ALJ to ensure that the record developed at the hearing 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). On remand, the ALJ should inquire with claimant and any other party with relevant information as to the circumstances surrounding her receipt of the nine administrative decisions in August and September 2016 and her failures to file timely requests for hearing in September and October 2016. The ALJ should also inquire about whether claimant's October 26, 2016 late requests for hearing were filed within seven days of the date whatever circumstances prevented a timely filing ceased to exist, and ask any follow-up questions the ALJ deems necessary to develop a complete record on claimant's late requests for hearing. If, and only if, claimant establishes good cause for any of the late filings would the parties then be allowed to present evidence about the substantive issue(s) covered in the corresponding administrative decision(s)

NOTE: The failure of any party to appear at the hearings on remand will not reinstate the hearing decisions or return these matters to EAB. Only a timely applications for review of the subsequent hearing decisions will cause these matters to return to EAB.

DECISION: Hearing Decisions 16-UI-70250, 16-UI-70255, 16-UI-70258, 16-UI-70263, 16-UI-70267, 16-UI-70251, 16-UI-70253, 16-UI-70254 and 16-UI-70265 are set aside, and these matters remanded for further proceedings consistent with these orders.

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

DATE of Service: December 1, 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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