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State of Oregon
Employment Appeals Board
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Salem, OR 97311

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| <p>EMPLOYMENT APPEALS BOARD DECISION 2016-EAB-1369</p> |
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Reversed & Remanded
(Revocada y Remitida)

PROCEDURAL HISTORY: On October 7, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 85303) and an administration decision concluding that claimant was discharged for misconduct (decision # 83705). On October 27, 2016, decisions # 85303 and # 83705 became final without claimant having filed requests for hearing. On November 8, 2016, claimant filed late requests for hearings on both decisions. On November 14, 2016, ALJ Kangas issued Hearing Decisions 16-UI-71072 and 16-UI-71073, dismissing claimant's late requests for hearing subject to his right to renew the requests by responding to an appellant questionnaire by November 28, 2016. On November 29, 2016, claimant filed, by mail, timely applications for review of Hearing Decisions 16-UI-71072 and 16-UI-71073 with the Employment Appeals Board (EAB) that included appellant questionnaire responses, which EAB forwarded to the Office of Administrative Hearings (OAH). On December 6, 2016, ALJ Kangas issued letters stating that claimant's appellant questionnaire responses would not be considered because they were not mailed or faxed within the designated time period, that Hearing Decisions 16-UI-71072 and 16-UI-71073 therefore remained in effect, but that the EAB review process remained unaffected.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-71072 and 16-UI-71073. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-1369 and 2016-EAB-1370).

CONCLUSIONS AND REASONS: Hearing Decisions 16-UI-71072 and 16-UI-71073 are reversed, and these matters remanded to OAH for additional proceedings.

Claimant submitted for EAB's consideration appellant questionnaire responses that were not considered during the proceedings before OAH. OAR 471-041-0090 (October 29, 2006) provides that EAB may consider such information if it 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 or 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 mailed 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 determinations in these matters 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. EAB has marked claimant's questionnaire responses as EAB Exhibits 1 and 2, which are hereby admitted into these records subject to the parties' right to object.¹

Claimant's questionnaire responses suggest that he might have good cause for the late filings in these matters based upon his alleged failure to receive notice of decisions # 85303 and # 83705 in the mail. However, there is insufficient evidence in the record upon which to base a conclusion about whether those circumstances amounted to good cause. ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily 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). A remand is therefore required so the ALJ can develop a record about the circumstances under which claimant was prevented from filing timely requests for hearing in these matters, and whether claimant filed his late requests for hearing within the seven-day "reasonable time" period after those circumstances ceased to exist.

During the hearing on remand, the scope of the issues before the ALJ will, at least initially, include *only* the late request for hearing issues; that is, whether claimant can prove he had good cause to miss and extend the filing deadlines in these cases, and prove that when he filed he late requests on November 8, 2016 it was within the seven-day reasonable time period after those circumstances ceased to exist. *Only* if claimant can establish good cause would the ALJ then have jurisdiction to hear evidence about whether claimant quit work without good cause, and whether he was discharged for misconduct. If claimant cannot prove good cause for the late requests for hearing, he will not be entitled to present evidence about those matters.

DECISION: Hearing Decisions 16-UI-71072 and 16-UI-71073 are set aside, and these matters remanded for further proceedings consistent with this order.² *Las decisiones de las Audiencias 16-UI-71073 y 16-UI-71072 se ponen a un lado, y estas decisiones se remiten para otros procedimientos constantes con esta orden.*

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

DATE of Service: December 12, 2016

¹ Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. Unless such objection is received and sustained, EAB Exhibits 1 and 2 will remain in the record.

² The failure of any party to appear at the hearings on remand will not reinstate Hearing Decisions 16-UI-71072 and 16-UI-71073 or return these matters to EAB. Only timely applications for review of the 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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NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.