

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1375

Reversed & Remanded

PROCEDURAL HISTORY: On January 9, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that on July 26, 2014, claimant voluntarily left work for Jimmy Johns Gourmet Sandwiches without good cause (decision # 93137). On January 29, 2015, decision # 93137 became final without a request for hearing having been filed. On November 10, 2016, claimant filed an untimely request for hearing. On November 16, 2016, ALJ Kangas issued Hearing Decision 16-UI-71219, dismissing claimant's hearing request, subject to his right to renew the request by responding to an appellant questionnaire within 14 days. On December 6, 2016, claimant submitted a response to the appellant questionnaire and a timely application for review of Hearing Decision 16-UI-71219 to the Employment Appeals Board (EAB). EAB forwarded the response to the questionnaire to the Office of Administrative Hearings (OAH), and by letter dated December 6, 2016, OAH notified claimant that, because his response to the appellant questionnaire was late, OAH would not review the response.

EVIDENTIARY MATTER: We construe claimant's submission of the questionnaire to EAB as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at a hearing if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at a hearing. OAH's refusal to consider the information claimant presented in his appellant questionnaire was a circumstance beyond claimant's reasonable control. We therefore admitted claimant's responses to the appellant questionnaires into evidence as EAB Exhibit 1, and reviewed and considered these responses when reaching this decision.¹

FINDINGS OF FACT: (1) Sometime after December 25, 2014, claimant was evicted from the following address where he had been living: 355 S. Timber Creek Drive, Sisters, Oregon. At the time he was evicted, claimant had no forwarding address.

¹ Any party that objects to admission of EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, EAB Exhibit 1 will remain in the record.

(2) At the end of October 2016, claimant discovered that he had mail at the S. Timber Creek Drive address and found decision # 93137, the decision at issue.

CONCLUSIONS AND REASONS: Hearing Decision 16-UI-71219 is reversed, and this matter remanded to OAH for further development of the record.

Under ORS 657.269, claimant had 20 days after decision # 93137 was issued to request a hearing. Because claimant filed his request for hearing more than a year and one half after decision # 93137 was issued, his hearing request was untimely. ORS 657.875 provides, however, that the time period for requesting a hearing may be extended “a reasonable time” upon a showing of “good cause.” “Good cause” is “when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant’s reasonable control.” OAR 471-040-0010(1). A “reasonable time” is “seven days after the circumstances that prevented a timely filing ceased to exist.” OAR 471-040-0010(3) (February 10, 2012).

In EAB Exhibit 1, claimant provided a brief description of circumstances that might demonstrate good cause for filing an untimely hearing request. Because claimant failed to describe these circumstances in detail, however, additional evidence is needed to determine if claimant satisfied the good cause standard, and, if so, whether he filed his hearing request within a reasonable time after the circumstances that prevented a timely filing ceased to exist.

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). That obligation requires that the ALJ ensure that the record shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ. Because the ALJ failed to develop the record necessary for a determination of whether claimant had good cause for filing a late request for hearing, Hearing Decision 16-UI-70663 is reversed and this matter remanded for additional evidence.

On remand, the ALJ must ask claimant on what date he left the S. Timber Creek Drive address, and what, if any, arrangements he made to be notified about mail he might receive at that address after he left. In addition, the ALJ should ask whether claimant was claiming unemployment benefits at the time he left the S. Timber Creek Drive address and, if he was not, when he stopped claiming benefits. The ALJ must also ask claimant if he had any reason to believe that he would be receiving correspondence from the Department in January 2015 about a work separation that occurred in July 2014. The ALJ must ask on what date claimant received decision # 93137 to determine how much time elapsed between the date claimant received the decision and his November 10, 2016 hearing request. Finally, the ALJ should ask any other questions necessary to determine whether claimant’s untimely hearing request resulted from an excusable mistake or circumstances beyond claimant’s reasonable control, and whether he filed his request for hearing within a reasonable time after these circumstances ceased to exist. If the ALJ determines that claimant had good cause for his untimely hearing request, and that he filed his hearing request within a reasonable time, the ALJ must then conduct a hearing on the merits of decision # 93137.

The failure of any party to appear at the hearing\ on remand will not reinstate the hearing decision or return this matter to EAB. Only a timely application for review of the subsequent hearing decisions will cause these matters to return to EAB.

DECISION: Hearing Decision 16-UI-71219 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: December 14, 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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