

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0424

Reversed & Remanded

PROCEDURAL HISTORY: On November 29, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 92442) concluding that claimant failed to actively search for work from October 23 through 29, 2016 (week 43-16). On December 19, 2016, decision # 92442 became final, without a request for hearing having been filed. On March 15, 2017, claimant filed an untimely request for hearing on decision # 92442. On March 21, 2017, ALJ Kangas issued Hearing Decision 17-UI-79278, dismissing claimant's hearing request as untimely, subject to claimant's right to renew the request by responding to an appellant questionnaire within 14 days. On April 5, 2017, claimant submitted his response to the appellant questionnaire and filed an application for review of Hearing Decision 17-UI-79278 with the Employment Appeals Board (EAB). By letter dated April 11, 2017, the Office of Administrative Hearings (OAH) informed claimant that because he had not timely submitted his response to the appellant questionnaire, his response would not be considered and that Hearing Decision 17-UI-79278 remained undisturbed.

Evidentiary Matter. With his application for review, claimant included his April 5 response to the appellant questionnaire, information which was not considered by OAH and is therefore not part of the hearing record. Under OAR 471-041-0090(2) (October 29, 2006), EAB may consider new information not part of a hearing record if the party presenting the information shows that circumstances beyond the party's control prevented the party from offering the information at a hearing. OAH's refusal to consider claimant's response to the appellant questionnaire was a circumstance beyond his reasonable control. His request to present new information is therefore allowed. Claimant's April 5 response to the appellant questionnaire has been marked as EAB Exhibit 1, and a copy of EAB Exhibit 1 is included with this decision. Any party that objects to the admission of EAB Exhibit 1 must submit its objections to this office in writing, setting forth the basis of the objection, within ten days of the date on which this decision is mailed. Unless such an objection is received, EAB Exhibit 1 will remain part of the record.

FINDINGS OF FACT: (1) Claimant claimed benefits for weeks 43-16 and 44-16 (October 23 through November 5, 2016); he received waiting week credit for week 43-16, and was paid benefits for week 44-16. Claimant stopped claiming benefits on November 10, 2016.¹

(2) From approximately mid-November 2016 until mid-February 2017, claimant was away from his home and working on a construction job. Claimant only learned about decision # 92442 in March 2017.

CONCLUSION AND REASONS: We conclude that claimant demonstrated good cause for filing an untimely hearing request. This matter is reversed and remanded for further development of the record to determine whether claimant filed his hearing request within a reasonable time, however.

ORS 657.269(2) requires that requests for hearing on administrative decisions be filed within 20 days after it was mailed. The deadline to request a hearing on decision # 92442 was December 19, 2016; because claimant filed his request on March 15, 2017, it was late. ORS 657.875 allows the filing deadline to be extended a “reasonable time” upon a showing of “good cause,” however. OAR 471-040-0010(1) defines “good cause” as “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(3) defines a “reasonable time” as seven days after the circumstances that prevented a timely filing ceased to exist.

On November 29, 2016, the date on which the Department mailed decision # 92442 to claimant, he was no longer claiming benefits and had not done so for almost three weeks. Claimant had received waiting week credit for the first week he had claimed, week 43-16, and was paid benefits for the second week he claimed, week 44-16. Under these circumstances, a reasonable person would not think a problem was likely to arise with his claim and would therefore not find it necessary to regularly check his mail for a letter from the Department, or make arrangements to have someone else check his mail for such a letter while he was out of town working, particularly weeks after he stopped claiming benefits. Because claimant had no reason to expect any correspondence from the Department, filing a timely hearing request was a circumstance beyond his reasonable control. Claimant therefore demonstrated good cause to extend the filing deadline to request a hearing on decision # 92442.

Further evidence is necessary; however, to determine whether claimant filed his hearing request within a reasonable time after the circumstances that prevented his timely filing ceased to exist. In his response to the appellant questionnaire, claimant stated that he “was unaware of the situation until March 2017. I filed request of appeal as soon as I was aware of situation due to ‘unemployment insurance overpayment billing statement.’” EAB Exhibit 1. On remand, the ALJ must ask claimant on what date he first became aware of decision # 92442, and whether he became aware of the decision because of a Department billing statement he received or by some other means. If claimant testifies that he learned about the decision because he received a Department billing statement, the ALJ should ask claimant (and any Department representative who may appear at the hearing), when claimant was mailed or received the billing statement, whether claimant had any contact with a Department representative after receiving the statement, and, if he had any such contact, what was discussed with the Department representative during those contacts. If the ALJ determines, based on the evidence presented at the

¹ We take notice of these facts, which are contained in Employment Department records. 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. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed facts will remain in the record.

hearing, that claimant filed his hearing request within a reasonable time, the ALJ must then conduct a hearing on the merits of claimant's hearing request.

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 Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop the record necessary for a determination of whether claimant is disqualified from the receipt of unemployment benefits, Hearing Decision 17-UI-79278 is reversed, and this matter remanded for further development of the record.

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-79278 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

DECISION: Hearing Decision 17-UI-79278 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: April 14, 2017

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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