

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0886

Reversed ~ Revocada
Late Request for Hearing Allowed ~ Se Permite la Solicitud de Audiencia Tardía

PROCEDURAL HISTORY: On March 2, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant quit work at Wacker Remodel LLC without good cause (decision # 75607). On March 22, 2017, decision # 75607 became final because claimant did not file a timely request for hearing. On May 2, 2017, claimant filed a late request for hearing. On May 10, 2017, ALJ Kangas issued Hearing Decision 17-UI-82991, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by May 24, 2017. On May 19, 2017, claimant responded to the questionnaire. On June 2, 2017, the Office of Administrative Hearings (OAH) mailed notice of a telephone hearing scheduled for June 22, 2017. Claimant asked for an in-person hearing. OAH canceled the June 22, 2017 hearing. On June 22, 2017, OAH mailed notice of an in-person hearing scheduled for July 17, 2017. On July 17, 2017, ALJ Meerdink conducted the hearing, and on July 19, 2017 issued Hearing Decision 17-UI-88388, dismissing claimant's late request for hearing. On July 25, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant received decision # 75607 shortly after it was mailed. He thought the decision told him that he was supposed to receive \$856 from Wacker Remodel, and waited to receive that money. Claimant had been waiting to hear from Wacker Remodel anyway because he believed that Wacker Remodel was going to call him to come back to work when there was work for him to do.

(2) In approximately early May 2017, claimant began receiving billing statements from the Department that stated he owed the Department \$3,210. On May 2, 2017, claimant went to one of the Department's WorkSource offices to "talk with them about what was happening" and "ask them why they were charging me money." Transcript at 6, 14. He also wanted to explain that he never received an \$856 check from his former employer, and "wanted to find out when he supposedly paid me that \$850." Transcript at 6. Claimant requested a hearing the same day because he wanted to "explain it to them about the check that supposedly I'd been paid of \$856.00." Transcript at 13.

CONCLUSIONS AND REASONS: We disagree with the ALJ, and conclude that claimant had good cause for filing a late request for hearing and is entitled to a hearing on the merits of decision # 75607.

ORS 657.269 provides that the Department's decisions become final unless claimant filed a request for hearing within 20 days of the date of the decision. ORS 657.875 allows the filing deadline to be extended a reasonable time upon a showing of good cause. 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). "Good cause" is circumstances beyond claimant's reasonable control or an excusable mistake, but does not include not understanding the implications of a decision when it is received. OAR 471-040-0010(1). Good cause includes when a person with limited English proficiency fails to understand a decision because of the Department's "failure to communicate . . . in a language that could be understood by the limited English proficient person upon gaining knowledge that the person needed or was entitled to such assistance." OAR 471-040-0010(2).

The ALJ concluded that claimant did not have good cause to extend the filing deadline in this case. The ALJ stated that he found it "difficult to discern why claimant did not request a hearing earlier" but that it was likely because he was confused about decision # 75607. Hearing Decision 17-UI-88388 at 3. We disagree. Claimant articulated his reasons for filing a late request for hearing in this matter during the hearing: he stated that he read decision # 75607 as telling him that he was supposed to receive, or supposed to have received, \$856 from Wacker Remodel, and he did not know that there was a problem with his case until he learned from the Department in May 2017 that he owed \$3,210.

We also disagree with the ALJ's conclusion that claimant's failure to understand decision # 75607 or "comprehend the far-reaching effects of it" did not amount to good cause to extend the filing period in this case. *See* Hearing Decision 17-UI-88388 at 3. The administrative decision the Department mailed to claimant stated:

Esta negación comienza el 16 de octubre de 2016 y termina cuando usted ha *recibido* salarios de uno o más empleadores en la cantidad de \$856.00, *obtenidos* después de 23 de octubre de 2016. Puede que se le pida proporcionar prueba de estos ingresos. Además, su beneficio máximo se puede reducir por ocho (8) veces la cantidad de su beneficio semanal.

The use of the term *recibido*, or "received," in the first sentence, coupled with the use of the word *obtenidos*, or "obtained," in the second sentence makes the decision easily susceptible to misinterpretation by a Spanish language reader, and might lead the reader to reasonably interpret the sentence as saying that he is supposed to be receiving money that is already owed to him, from *uno o más empleadores*, or "one or more employers." The language does not suggest to the reader that the amount of money written in that paragraph would need to be "earned" from future work rather than "received" from any employer; the Spanish term meaning "earned" is not *obtenidos*, which is typically used in the context of winning a degree in education or an honor, it is *ganados* or *ganar*, which is typically used in the context of "to gain income." It is not unreasonable under the circumstances for claimant to have misunderstood the decision or what it was supposed to have meant to him.

It is also notable in this case that claimant notified OAH in his questionnaire responses that he had difficulty reading the Spanish language and that his lack of reading skills affected his ability to

understand decision # 75607. For example, when asked why he filed his request for hearing late, he responded:

Porque yo no se leer muy bien . . .
“Because I do not know how to read very well . . .”

When asked why he had good cause to file a late request for hearing, he responded:

Les pido disculpa, no se leer muy bien . . .
“I apologize, I do not know how to read very well . . .”

The ALJ did not develop the record concerning claimant’s reading skills, but given the ambiguity of the language used in decision # 75607, and claimant’s stated difficulty reading and comprehending written Spanish, we conclude that claimant’s failure to understand decision # 75607 amounted to good cause for the late request for hearing, either because he did not receive clear communication from the Department in terms he could understand, or because his mistake in not seeking help to understand the decision was excusable given the fact that he had no reason to know he had not properly understood the decision or how it applied to his circumstances when he read it.

Claimant found out that he needed to file a late request for hearing when he spoke with Department employees on or around May 2, 2017, and filed the late request the same day. His late request for hearing was, therefore, filed within the seven-day “reasonable time” period.

Because claimant showed good cause and filed his late request within a reasonable time, he is entitled to a new hearing on the merits of decision # 75607.

DECISION: Hearing Decision 17-UI-88388 is set aside, as outlined above. *Decisión de la Audiencia 17-UI-88388 se deja a un lado, de acuerdo a lo indicado arriba.*

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

DATE of Service: August 4, 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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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.