

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0608**

*Reversed*  
*Request for Hearing Allowed*

**PROCEDURAL HISTORY:** On March 20, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 153842). Claimant filed a request for hearing. On April 19, 2018, ALJ Kangas issued Order No. 18-UI-107777, dismissing claimant's request for hearing as late without a showing of good cause, subject to her right to renew her request by filing a response to an appellant questionnaire by May 3, 2018. On May 3, 2018, claimant filed a timely response to the appellant questionnaire. On May 8, 2018, the Office of Administrative Hearings (OAH) served notice that Order No. 18-UI-107777 was cancelled and vacated, and that a hearing would be scheduled to address the timeliness of claimant's hearing request and, if appropriate, the merits of decision # 153842. On May 29, 2018, ALJ Seideman conducted a hearing, and on May 30, 2018 issued Order No. 18-UI-110353, dismissing claimant's request for hearing as late without good cause. On June 18, 2018, claimant filed a timely application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument to the extent it was relevant and based on the hearing record. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

**FINDINGS OF FACT:** (1) On March 15, 2018, a Department representative telephoned claimant and left a voice message requesting information regarding claimant's apparent work separation from the employer. As of March 20, 2018, claimant had not returned the representative's call. On March 20, 2018, the Department mailed notice of decision # 153842 to claimant and the employer.

(2) On March 21, 2018, claimant returned the representative's call. The representative notified claimant that an administrative decision had been mailed to her on March 20<sup>th</sup>, and that the decision denied claimant benefits based on the conclusion that she quit working for the employer without good cause. The representative also notified claimant that the decision was based solely on information provided by the employer because claimant had not returned the representative's March 15<sup>th</sup> request for information in a timely manner. Claimant responded by telling the representative, "Okay, is there . . . somebody over your head that will take my case, and that will hear me out . . . ." Audio Record at 35:22.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that claimant filed a timely request for hearing on decision # 153842. Claimant's timely request for hearing is allowed, and claimant is entitled to a hearing on the merits of decision # 153842.

ORS 657.269 provides that the Department's decisions become final unless a party files a request for hearing within 20 days after the date it is mailed. A request for hearing may be filed on forms provided by the Department or similar offices in other states. OAR 471-040-0005(1) (July 14, 2011). However, use of the form is not required, and a party may file a request for hearing by mail, fax or telephone, provided the party specifically requests a hearing or otherwise expresses a present intent to appeal. OAR 471-040-0005(1) and (2).<sup>1</sup>

In the present case, the Department mailed decision # 153842 on March 20, 2018, and the deadline for claimant to file a request for hearing was April 9, 2018. In Order No. 18-UI-110353, the ALJ determined that claimant did not file a request for hearing until April 17, 2018. We disagree with that determination.

It is undisputed that on March 21, 2018, claimant telephoned the Department and spoke with a Department representative. It also is undisputed that the representative notified claimant that an administrative decision had been mailed to her on March 20<sup>th</sup>, and that the decision denied claimant benefits based on the conclusion that she quit working for the employer without good cause. It also is undisputed that the representative notified claimant that the decision was based solely on information provided by the employer because claimant had not returned the representative's March 15<sup>th</sup> request for information in a timely manner. And finally, it is undisputed that claimant responded by telling the representative, "Okay, is there . . . somebody over your head that will take my case, and that will hear me out . . ." Audio Record at 35:22. Claimant's response specifically requested a hearing on, and expressed a present intent to appeal, the Department's decision that she was disqualified from receiving benefits based on a work separation from the employer.

We therefore disagree with the ALJ and conclude that claimant filed a timely hearing on decision # 153842. Claimant's timely request for hearing is allowed, and claimant is entitled to a hearing on the merits of decision # 153842.

**DECISION:** Order No. 18-UI-110353 is set aside, as outlined above.

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

**DATE of Service: June 27, 2018**

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<sup>1</sup> ORS 657.875 provides that the 20-day deadline may be extended a "reasonable time" upon a showing of "good cause." OAR 471-040-0010 (February 10, 2012) provides that "good cause" includes factors beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors ceased to exist.