

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0748

Reversed & Remanded

PROCEDURAL HISTORY: On February 1, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits and assessing a \$752 overpayment (without penalties) (decision # 200311). On February 6, 2018, claimant filed a timely request for hearing. On March 7, 2018, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for 9:30 a.m. on March 21, 2018, at which time claimant failed to appear. On March 21, 2018, ALJ Wyatt issued Order No. 18-UI-105615, dismissing claimant's hearing request for failure to appear. On April 10, 2018, Order No. 18-UI-105615 became final without claimant having filed a timely request to reopen the hearing. On July 10, 2018, claimant filed a request to reopen the hearing. On July 27, 2018, ALJ Kangas considered claimant's reopen request and issued Order No. 18-UI-113242, denying the request. On July 27, 2018, claimant filed an application for review of Order No. 18-UI-113242 with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: We disagree with the ALJ that claimant's late request to reopen should be denied, and conclude that additional evidence is required to determine whether to allow or deny the late request to reopen.

ORS 657.270(7)(a)(C) provides that the ALJ may dismiss a request for hearing if the requesting party fails to appear at the time of the hearing. Any party may request to reopen the hearing, and the request may be allowed if the party failed to appear at the hearing, the party files the request to reopen within 20 days after the decision was issued, and the party shows good cause for failing to appear. ORS 657.270(5)(c). ORS 657.875 provides that the 20-day deadline for filing a timely request to reopen may 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 471-040-0041. "Good cause" is, in pertinent part, an "excusable mistake" or "factors beyond an applicant's reasonable control." *Id.*

The ALJ concluded that claimant's request to reopen should be denied, reasoning that the "request to reopen was filed more than 20 days after the hearing decision was issued" and "includes no explanation of why she did not file the reopening request within the 20 days allowed." Order No. 18-UI-113242 at 3. However, claimant's request to reopen stated not only that she was unable to attend the March 21st

hearing, but also that she “wrote a letter and called, regarding my disability and medical surgery’s [*sic*] and nursing home admitting for over 2 months.”

The circumstances claimant described in her reopen request suggest that her delay in filing might have been the result of an excusable mistake or factors beyond her reasonable control related to her health and more than two-month nursing home stay. However, there is insufficient evidence in the reopen request upon which to reach a decision to allow or deny the reopening request, and additional evidence about claimant’s circumstances is necessary. The ALJ should ask about the effect claimant’s disabilities, surgeries and nursing home stay had on her ability to file a timely request to reopen the hearing. The ALJ should also ask claimant about the letter she wrote, when she wrote it, to whom she mailed it, what the letter said, and how the letter related to her late request to reopen. The record should be developed as to whether claimant’s July 10th late request to reopen was filed within the 7-day reasonable time period after the circumstances that prevented her from filing a timely request to reopen ceased to exist. The ALJ should also ask any other questions that develop in the course of conducting the hearing.

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). Because the ALJ failed to develop the record necessary for a determination of whether or not claimant had good cause to file a late request to reopen the March 21st hearing, Order No. 18-UI-113242 is reversed, and this matter is remanded for development of the record.

We note that this matter is being remanded only for a hearing on whether or not claimant had “good cause” to file a late request to reopen. If claimant can prove that she had good cause for filing her request late, the issue then becomes whether claimant can prove that she had “good cause” for missing the March 21st hearing and therefore is entitled to reopen that hearing. Only if claimant proves both of those things would she be entitled to present evidence about whether or not she misrepresented her earnings and was overpaid \$752 in unemployment insurance benefits.

DECISION: Order No. 18-UI-113242 is set aside, and this matter remanded for further proceedings consistent with this order.

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

DATE of Service: August 9, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. or return this matter to EAB. Only a timely application for review of the subsequent Order will cause this matter to return to EAB.

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