

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0823

Reversed & Remanded

PROCEDURAL HISTORY: On March 13, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 93611). On April 2, 2018, decision # 93611 became final without claimant having filed a timely request for hearing. On May 14, 2018, the Department served notice of another administrative decision assessing a \$1,812 overpayment (decision # 141408). On May 18, 2018, claimant filed a timely request for hearing on decision # 141408 and a late request for hearing on decision # 93611.

On May 29, 2018, the Office of Administrative Hearings (OAH) mailed two notices of two hearings, one on decision # 93611 scheduled for June 11, 2018 at 9:30 a.m., and the other on decision # 141408 scheduled for June 11, 2018 at 10:45 a.m. On June 11, 2018, OAH mailed two notices rescheduling the hearings, one rescheduling the hearing on decision # 93611 to June 25, 2018 at 9:30 a.m., and the other rescheduling the hearing on decision # 141408 to June 25, 2018 at 10:45 a.m.

On June 25, 2018, claimant did not appear for either of the hearings. On June 25, 2018, ALJ Meerdink issued Order No. 18-UI-111971, dismissing claimant's late request for hearing on decision # 93611 for failure to appear, and Order No. 18-UI-111972, dismissing claimant's request for hearing on decision # 141408 for failure to appear. On July 16, 2018, Order Nos. 18-UI-111971 and 18-UI-111972 became final without claimant having filed a timely request to reopen the hearings.

On August 8, 2018, claimant filed late requests to reopen the June 25th hearings. On August 9, 2018, ALJ Kangas considered claimant's requests and issued Order No. 18-UI-114668, dismissing claimant's late request to reopen the hearing on her late request for hearing on decision # 93611, and Order No. 18-UI-114669, dismissing claimant's late request to reopen the hearing on decision # 141408. On August 22, 2018, claimant filed timely applications for review of both Orders with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 18-UI-114668 and 18-UI-114669. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0822 and 2018-EAB-0823).

CONCLUSIONS AND REASONS: These matters are reversed and remanded for additional proceedings and decisions.

ORS 657.270(5)(c)(B) provides that a party filing a request to reopen must do so within 20 days after the issuance of the written decision by the administrative law judge. The 20-day period claimant had to request reopening after Order Nos. 18-UI-111971 and 18-UI-111972 were issued expired on July 16, 2018 without claimant having filed her requests.

ORS 657.875 provides that the 20-day filing period may be extended a reasonable time upon a showing of good cause. OAR 471-040-0041(3) defines “a reasonable time” as seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041(2) defines “good cause,” in brief part, as “an excusable mistake” or “factors beyond an applicant’s reasonable control.”

The ALJ concluded that claimant did not establish good cause for her late requests to reopen and did not file her requests within a reasonable time because, although claimant “provided information that she thought she might not be receiving all her mail and that she faxed her reopen request three times,” she “did not provide any information when she previously tried to fax her reopen request or why her fax attempts failed.” Order Nos. 18-UI-111971 and 18-UI-111972 at 3. We disagree that the record was sufficiently developed to reach that decision.

The ALJ’s decision was based entirely upon consideration of claimant’s written statement, which, although brief, suggested that she might have filed a timely, or at least earlier, request to reopen had her initial two faxes been received, and suggested the existence of factors or circumstances beyond her control – her failure to receive all of her mail – that might have prevented her from filing a timely application for review. Once that information was placed in the record, the administrative law judge (ALJ) adjudicating the case had a legal responsibility 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 administrative law judge in the case.” ORS 657.270(3); *see accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Only “after” the ALJ has given the parties “reasonable opportunity for a fair hearing” may the ALJ then decide the case and issue a decision. ORS 657.270(4).

The existence of facts that suggested claimant’s requests to reopen might have been filed earlier than August 8, 2018, or that she might have had good cause for filing a late request to reopen, obligated the ALJ to inquire with claimant on those matters before reaching a decision in these matters. These matters are therefore remanded to OAH for further proceedings consistent with this decision.

On remand, the threshold issues are what date claimant filed her requests to reopen the hearings in this matter, and, if the requests were filed late, whether she had good cause to extend the filing periods. Only if claimant establishes that the requests were either timely or that she had good cause to extend the filing period would the ALJ then have jurisdiction over whether claimant had good cause to reopen the hearings themselves. Only if claimant establishes good cause to reopen the hearings would the ALJ then have jurisdiction to hear evidence about the merits of decision # 141408 and claimant’s late request for hearing on decision # 93611. And only if claimant establishes good cause for the late request for hearing on decision # 93611 would the ALJ then have jurisdiction to hear evidence about the merits of the work separation at issue in that decision.

DECISION: Order Nos. 18-UI-114668 and 18-UI-114669 are set aside, and these matters remanded for further proceedings consistent with this order.

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

DATE of Service: August 31, 2018

NOTE: The failure of any party to appear at the hearings on remand will not reinstate Order Nos. 18-UI-114668 and 18-UI-114669 or return these matters to EAB. Only timely applications for review of the subsequent Orders will cause these matters to return to EAB.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.