

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0893

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). On August 9, 2018, EAB issued Appeals Board Decision 2018-EAB-0748, reversing Order No. 18-UI-113242 and remanding the case to OAH. On August 10, 2018, OAH mailed notice of a hearing scheduled for 10:45 a.m. on August 28th, at which time claimant failed to appear. On September 5, 2018, ALJ Wyatt issued Order No. 18-UI-116064, dismissing claimant's request to reopen for failure to appear at the August 28th hearing. On September 11, 2018, claimant filed an application for review of Order No. 18-UI-116064 with EAB.¹

CONCLUSIONS AND REASONS: This matter should be set aside and remanded to OAH for further proceedings.

In written argument, claimant notified EAB that she was unable to appear at the August 28th hearing about her late request to reopen because she has "been in hospitals and nursing homes since I was exposed to MRSA at work October 29, 2017, and lost my Right domain hand" and is "[w]aiting for [her]"

¹ OAR 471-041-0060(4) provides that EAB will treat an application for review by a party whose request for hearing was dismissed because that party failed to appear as a request to reopen the hearing under ORS 657.270. However, because claimant made an appearance in the late reopen case and presented some evidence about the reasons for her failure to appear at the March 21st hearing and late request to reopen, the ALJ erred in dismissing claimant's late request to reopen for failure to appear, and the late request to reopen should have been denied by the ALJ, not dismissed. We therefore treated claimant's application for review as an application for review, and not as a request to reopen.

Employment Court date.” Claimant’s statement and request for relief is construed as a request to have EAB consider additional evidence under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. Claimant’s statement suggests the possibility that she might have been prevented from attending the August 28th hearing because she has been hospitalized and required nursing home care during the relevant time period. However, her statement was not sufficiently detailed for EAB to reach a determination about whether or not her hospitalization and nursing home stays amounted to good cause for missing the August 28th hearing, and additional evidence is required. This matter is therefore reversed, and remanded to OAH for additional proceedings.

We note that this matter is being remanded only for a hearing on whether or not claimant had “good cause” to miss the hearing about her late request to reopen. If claimant can prove that she had good cause to miss the hearing about her late request to reopen, she would then be entitled to present evidence about whether she had “good cause” for filing her request to reopen late. If she proves good cause for missing the hearing and filing 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, as well. Only if claimant proves all of those things would she then 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-116064 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: October 3, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-116064 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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