

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-1037

Reversed & Remanded

PROCEDURAL HISTORY: On March 12, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to complete the registration requirements, and was denied benefits for the period beginning on February 2, 2018 until the reason for the denial ended. On April 2, 2018, the decision became final without claimant having filed a request for hearing. On October 3, 2018, claimant filed a late request for hearing. On October 10, 2018, ALJ Kangas issued Order No. 18-UI-117980, dismissing claimant's request for hearing as untimely without a showing of good cause, subject to her right to renew the request by filing a response to an appellant questionnaire by October 24, 2018. On October 18, 2018, claimant filed a timely response to the appellant questionnaire with the Department. On October 30, 2018, claimant filed a late supplemental response to the appellant questionnaire with OAH and a timely application for review with the Employment Appeals Board (EAB). On October 31, 2018, ALJ Kangas served notice that because claimant's response was late, OAH would not consider her response or issue another order regarding this matter, and that Order No. 18-UI-117980 therefore remained in effect.

EAB considered claimant's October 18, 2018 response to the appellant questionnaire under OAR 471-041-0090(1) (October 29, 2016), under which information offered but not received into the hearing record may be received into evidence as necessary to complete the record. However, EAB did not consider the new information contained in the written argument claimant submitted with her application for review because claimant failed to establish that factors or circumstances beyond her reasonable control prevented her from offering that information into the hearing record in her response to the appellant questionnaire. *See* OAR 471-041-0090(2).

FINDINGS OF FACT: (1) Order No. 18-UI-117980 dismissed claimant's request for hearing as untimely without a showing of good cause subject to claimant's right to renew her request by filing a response to an appellant questionnaire by October 24, 2018.

(2) On October 18, 2018, claimant emailed the Department explaining that she never received notice of the Department's March 12th decision because she was homeless and lacked access to mail, and that she filed her late request for hearing on that decision the day after finding out about it.

CONCLUSIONS AND REASONS: Claimant's response to the appellant questionnaire is timely.

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).

Claimant's email of October 18, 2018 amounted to a timely response to the appellant questionnaire. ALJ Kangas therefore erred in declining to consider claimant's response or issuing a substantive order in this matter, and in concluding that Order 18-UI-117980 remained in effect. Claimant's response to the appellant questionnaire was timely, suggested that she might have good cause for her late request for hearing, and therefore a hearing should be scheduled to determine whether or not claimant had good cause to file a late request for hearing, and, if appropriate, the merits of the decision issued on March 12, 2018.

DECISION: Order No. 18-UI-117980 is set aside, and this matter is remanded for further proceedings consistent with this order.

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

DATE of Service: November 9, 2018

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-117980 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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