No. 13-AA-1038

DISTRICT OF COLUMBIA COURT OF APPEALS

GIRMA W. ADMASU,

Petitioner,

v.

7-11 FOOD STORE #11731G/21926D,

Respondent.

On Petition for Review from the Office of Administrative Hearings

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PETITIONER'S BRIEF

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RULE 28 (a)(2) DISCLOSURE STATEMENT

The parties in this case are Girma W. Admasu and 7-11 Food Store #11731G/21926D. In the Office of Administrative Hearings (OAH), Mr. Admasu proceeded *pro se*. No one represented 7-11 Food Store #11731G/21926D. In this Court Mr. Admasu is represented by Christopher A. Bates, Drake Hagner, Jennifer Mezey, and John C. Keeney, Jr., of the Legal Aid Society of the District of Columbia. As of the filing of this brief, 7-11 Food Store #11731G/21926D had not identified counsel.

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1. Whether the ALJ erred as a matter of law and abused her discretion in finding no "excusable neglect" where Mr. Adamsu was in Ethiopia caring for his dying parents when his claim for unemployment benefits was denied and had to rely on his wife, who received the English-only denial and appeal notice but who did not and could not read the appeal rights.

2. Whether the ALJ misapplied the four-part *Pioneer* test that this Court has adopted for "excusable neglect" under D.C. Code § 51-111 (b).

STATEMENT OF THE CASE

This appeal is about whether the inability of a third party to understand an English-only notice qualifies as "excusable neglect" permitting late appeal to the Office of Administrative Hearings (OAH). After the District of Columbia Department of Employment Services (DOES) denied Girma W. Admasu's application for unemployment benefits, Mr. Admasu filed his administrative appeal out of time with OAH. Mr. Admasu was in Ethiopia caring for his dying parents when the English-only denial and appeal rights letter arrived at his home in the District of Columbia. His wife, whose ability to read English is extremely limited, could not comprehend and therefore could not communicate to him in Ethiopia his appeal deadlines and procedures. Upon his return to the United States, Mr. Admasu visited DOES, obtained a copy of the decision and appeal rights, and appealed that same day. OAH, however, dismissed Mr. Admasu's appeal as untimely, concluding he had not demonstrated "excusable neglect" for his late filing. Mr. Admasu now petitions for review.

STATEMENT OF FACTS

A. Background

Petitioner Girma W. Admasu is a native Ethiopian and Amharic speaker with limited English proficiency. He lives with his wife, who reads and speaks very little English, in Washington, DC.

On March 15, 2013, after he was separated from his position at a 7-11 food store, Mr. Admasu applied for unemployment compensation at DOES. *See* Final Order 2 (A2).[1] He returned to DOES the following week to follow up on his claim. One month later, on April 24, 2013, Mr. Admasu had to return suddenly to Ethiopia to be with his parents, both of whom were gravely ill and subsequently died. *See* Hr'g Tr. 11 (R. at Tab 7). At the time Mr. Admasu left for Ethiopia, the duration of his trip was unknown, and there was no practical way to forward mail to him while he was away.

While Mr. Admasu was in Ethiopia with his dying parents, DOES mailed a claim denial letter with a notice of his appeal rights to his address in Washington, DC. *See* Final Order 2 (A2). The letter was written in English and was dated May 10, 2013. A few days later, Mr. Admasu's wife — who remained at home in the District — told Mr. Admasu by telephone that his claim had been denied. *See* Hr'g Tr. 13 (R. at Tab 7). She did not keep the letter. Nor did she tell Mr. Admasu, and Mr. Admasu did not know while he was in Ethiopia, that there was an appeals process or a fifteen-day deadline to appeal.

Mr. Admasu returned to the United States on July 21, 2013. In the three months he had been in Ethiopia, he had had internet access on only two occasions. *See id.* at 12. Two days after returning home — on July 23, 2013 — he visited DOES to ask about his claim. At that

[1] Per D.C. App. R. 30 (f)(1)(A), a copy of the OAH Final Order is included as Addendum A, and cited as "A__."

visit DOES provided Mr. Admasu a copy of the May 10 letter and advised that he could appeal his denial to OAH, which he did that same day. *See* Final Order 2 (A2).

B. The OAH Hearing

OAH heard Mr. Admasu's appeal on August 14, 2013. At Mr. Admasu's request, the court appointed two Amharic interpreters to assist with translation. No one appeared on behalf of Mr. Admasu's former employer. *See id.* at 1 (A1).

Mr. Admasu testified at the hearing with the help of the interpreters. He told the ALJ that he had returned to Ethiopia because "[m]y father and my mother [were] sick" and that both had passed away. Hr'g Tr. 11 (R. at Tab 7). He further testified that his brother had also been sick and that he had had a "rough time" in Ethiopia. *Id.* at 19. In response to questioning from the ALJ, Mr. Admasu explained that he had not told DOES he was leaving the country because "[a]t that time, it was sudden," but that he had asked his family to check on his claim for him. *Id.* at 11; *see also id.* at 13.

Mr. Admasu testified that approximately three weeks after he arrived in Ethiopia — around May 15, 2013 — his wife told him he had received a letter denying his claim. *Id.* at 13. He testified that she did not know what to do with the letter because she was "new to the country" and "[did not] know enough English." *Id.* at 19. Mr. Admasu did not see the letter until he returned to the United States and went to DOES because his wife did not keep a copy of it. *See* Final Order 2. (A2). When the ALJ asked whether a notice of appeal rights had been included with the letter, Mr. Admasu said he did not know. Hr'g Tr. 14 (R. at Tab 7).

The ALJ repeatedly faulted Mr. Admasu for leaving his non-English-speaking wife in charge of monitoring his claim while he was in Ethiopia. According to the ALJ, "whoever [Mr. Admasu] left in charge of monitoring [his] application needed to figure out what the appeal

rights were," and "leav[ing] somebody in charge who does not know, who you know does not know how to cope with being in charge of [your application]" is "not consistent with what the law requires." *Id.* at 16, 19-20. Mr. Admasu explained that he did not have "friends who [could] follow up on" his application, and that his children were too young to be of any help. *Id.* at 18.

C. The Final Order

The ALJ issued a Final Order on August 19, 2013 dismissing Mr. Admasu's appeal as untimely. In the order, the ALJ found that Mr. Admasu had applied for unemployment benefits on March 15, 2013; that he had left for Ethiopia on April 24, 2013, to be with his dying parents; that DOES had mailed a letter denying Mr. Admasu's claim on May 10, 2013; that shortly thereafter his wife told him his benefits had been denied; that Mr. Admasu returned to the United States on July 21, 2013; and that two days later, on July 23, 2013, Mr. Admasu visited DOES, was told he could appeal his denial to OAH, and did so. *See* Final Order 2 (A2).

On the basis of these findings, the ALJ concluded as a matter of law that Mr. Admasu had not demonstrated "excusable neglect" under D.C. Code § 51-111 (b). Specifically, the ALJ found that there was "no evidence to show that [Mr. Admasu] would have been unable, with the exercise of ordinary care, to meet the 15-day deadline," and that "[n]othing in the record suggest[ed] the appeal process would have been unduly burdensome for [Mr. Admasu] to ask his wife to perform during his absence in Ethiopia." *Id.* at 4-5 (A4-5). In the ALJ's view, because Mr. Admasu had left for Ethiopia without notifying DOES and had not told his wife to follow up on the denial letter, he had "[f]ail[ed] to safeguard important rights when the means were available to him" and failed to "act[] in good faith." *Id.* at 5. (A5). Accordingly, the ALJ concluded, Mr. Admasu had not met the standard for excusable neglect, his appeal was untimely, and OAH lacked jurisdiction to hear his appeal. *See id.* at 5-6. (A5-6).

STANDARD OF REVIEW

This Court "review[s] findings of excusable neglect *vel non* for 'clear abuse of discretion.'" *Savage-Bey v. La Petite Acad.*, 50 A.3d 1055, 1061 (D.C. 2012). This Court reviews OAH's factual findings "to ensure that they are supported by substantial evidence." *Odeniran v. Hanley Wood, LLC*, 985 A.2d 421, 424 (D.C. 2009). An OAH order cannot stand unless "OAH made findings of fact on each materially contested issue of fact, (2) substantial evidence supports each finding, and (3) OAH's conclusions flow rationally from its findings of fact." *District of Columbia Dep't of Emp't Servs. v. Vilche*, 934 A.2d 356, 360 (D.C. 2007). "Substantial evidence is 'more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Rodriguez v. Filene's Basement, Inc.*, 905 A.2d 177, 180-81 (D.C. 2006) (quoting *Gardner v. District of Columbia Dep't of Emp't Servs.*, 736 A.2d 1012, 1015 (D.C. 1999)). OAH's legal conclusions must be reversed if they are "[a]rbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." D.C. Code § 2-510 (a)(3)(A).

SUMMARY OF ARGUMENT

Mr. Admasu satisfied the four-part *Pioneer* test for excusable neglect under D. C. Code § 51-111 (b). Starting with the most important factor, the reason for his delay, he was in Ethiopia caring for his dying parents when the DOES notice of decision arrived and had to rely on his wife, whose ability to read and speak English is limited, for information about the decision and any potential appeal rights. Mr. Admasu's wife could not comprehend and therefore could not communicate to him his appeal deadlines and procedures.

There is also no substantial evidence to support the ALJ's finding that Mr. Admasu failed to act in good faith. Mr. Admasu promptly appealed to OAH within two days of his return from Ethiopia. Failure to find and appoint an English-speaking agent to read his mail while he was in

Ethiopia and to notify DOES of his sudden trip to Ethiopia when his parents became terminally ill are not evidence of bad faith.

As for the other *Pioneer* factors, Mr. Admasu's delay did not prejudice his former employer, who did not appear at the OAH hearing, and the short two-month delay also had no impact on judicial proceedings. Indeed, the only prejudice was to Mr. Admasu, as it delayed resolution of his claim. Because Mr. Admasu satisfied the *Pioneer* test, it was a clear abuse of discretion for OAH to refuse to hear his appeal.

Having wrongly concluded that Mr. Admasu did not act in good faith, the ALJ further compounded this error by making it the sole basis of her decision. In so doing, the ALJ ignored the other *Pioneer* factors, including the most important factor — the reason for Mr. Admasu's delay. This was legal error and must be reversed.

ARGUMENT

I. Because Mr. Admasu Was Out of the Country for a Family Emergency When the Denial Letter Arrived and His Wife Could Not Understand the English-Only Appeal Instructions, the ALJ Abused Her Discretion in Finding No "Excusable Neglect" for Mr. Admasu's Late Appeal to OAH.

A. All Four *Pioneer* Factors Point in Favor of Excusable Neglect.

Under the D.C. Unemployment Compensation Act, a claimant has fifteen days to appeal a denial of benefits. *See* D.C. Code § 51-111 (b). The fifteen-day deadline may be extended for "good cause" or "excusable neglect." *Id.*

In determining whether a claimant who has failed timely to appeal has shown excusable neglect, this Court applies the multifactor test of *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993). *See Savage-Bey*, *supra*, 50 A.3d at 1061 (adopting the *Pioneer* test). The *Pioneer* test has four parts: "(1) the danger of prejudice to the [other parties], (2) the length of the delay and its potential impact on judicial proceedings, (3) the

reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith." *Pioneer*, *supra*, 507 U.S. at 395 (numbering added). "[T]he determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Id.*

Federal courts have recognized that the four factors "do not carry equal weight." *Lowry v. McDonnell Douglas Corp.*, 211 F.3d 457, 463 (8th Cir. 2000); *accord United States v. Munoz*, 605 F.3d 359, 372 (6th Cir. 2010); *Graphic Commc'ns Int'l Union, Local 12-N v. Quebecor Printing Providence, Inc.*, 270 F.3d 1, 5 (1st Cir. 2001). Rather, "the excuse given for the late filing must have the greatest import." *Lowry*, *supra*, 211 F.3d at 463; *see also id.* ("While prejudice, length of delay, and good faith might have more relevance in a closer case, the reason-for-delay factor will always be critical to the inquiry."). Courts — including this one — thus give special attention to whether the claimant has shown "some reasonable basis for non-compliance within the time specified in the rules." *Dada v. Children's Nat'l Med. Ctr.*, 715 A.2d 904, 908 (D.C. 1998).

This Court has additionally instructed that the *Pioneer* test should be applied "in light of the principle that the provisions of the [unemployment] compensation statute 'should be construed liberally, whenever appropriate to accomplish the legislative objective of minimizing the economic burden of unemployment.'" *Savage-Bey*, *supra*, 50 A.3d at 1063 (quoting *Bublis v. District of Columbia Dep't of Emp't Servs.*, 575 A.2d 301, 303 (D.C. 1990); *see also Cruz v. District of Columbia Dep't of Emp't Servs.*, 633 A.2d 66, 71 (D.C. 1993) ("[T]he sufficiency of a claimant's asserted justifications must be considered in light of the remedial purposes of the statute."). Indeed, the Committee Report for the 2010 amendments to the statute, which added the good cause and excusable neglect exceptions, emphasizes that "[u]nemployment insurance is

a critical part of the safety net during these economic times" and that a central purpose of the amendments was "to extend eligibility" for such insurance. D.C. Council, Comm. on Hous. & Workforce Dev., *Report on Bill 18-455: Unemployment Compensation Reform Amendment Act of 2010*, at 1 (2010).

Here, each *Pioneer* factor points in favor of excusable neglect. Indeed, the most important *Pioneer* factor — the reason for Mr. Admasu's delay — alone supports a finding of excusable neglect. Mr. Admasu testified that he was in Ethiopia caring for his dying parents when the notice was sent to his home in Washington, DC. *See* Hr'g Tr. 11 (R. at Tab 7) ("I went to Ethiopia. My father and my mother [were] sick and both are deceased right now."); *see also id.* at 19 ("I didn't take any steps [to appeal] because I had a rough time in Ethiopia. My brother was also sick and had other family problems."). During this time he had limited internet access, *see id.* at 12 (testifying that he had internet access only twice during the entire three months he was in Ethiopia), and had to rely on his wife, who reads very little English, for information about his claim and any appeal process, *see id.* at 18-19 ("My wife is new to the country. My children are very young. They don't know much. I don't have friends who can follow up on this. . . . Because [my wife's] new to the country, she doesn't know enough English. We didn't know what to do with the paperwork."). Mr. Admasu also speaks limited English, as indicated by his request for an Amharic interpreter. *See* Final Order 1 (A1). These distance, technology, and language barriers combined to prevent a timely filing at OAH.

The hearing transcript further makes clear that Mr. Admasu did not have notice of his appeal rights — or notice that he had a limited time in which to appeal — until after he returned to the United States. *See* Hr'g Tr. 20 (R. at Tab 7) ("[THE COURT:] Is there anything else that you want to say about the reasons why this was not filed on time? MR. ADMASU: It's my lack

of knowledge of the law."); *id.* at 21 ("It's all due to lack of knowledge."). When the ALJ asked if there were "other pages attached to" the May 10 denial letter, pages that would have contained a "Notice of Appeal Rights," Mr. Admasu responded that he had not "see[n] the documents properly" and so didn't know. *Id.* at 14. Indeed, Mr. Admasu's wife had even not kept the denial letter; the first time he ever saw it was when he went to DOES two days after returning from Ethiopia.[2] *See* Final Order 2 (A2). Immediately upon learning of his appeal rights from DOES, he filed his appeal. *See id.*

The record thus reflects that Mr. Admasu filed his appeal late because he was 7,000 miles away caring for dying family members and did not have anyone at home in the District with sufficient knowledge of English to read, comprehend, and relay information to him about his appeal rights and deadlines.[3] This explanation falls squarely within the types of justifications this Court has previously held support excusable neglect. *See, e.g.*, *Starling v. Jephunneh Lawrence & Assocs.*, 495 A.2d 1157, 1161 (D.C. 1985) (finding that "counsel's personal problems," which included traveling to Curaçao to care for his dying father, "appear[ed] to constitute excusable neglect"); *In re Al-Baseer*, 19 A.3d 341, 345 (D.C. 2011) (identifying "limited English language skills" and "limited understanding of [one's] rights and duties" as

[2] Mr. Admasu also testified that he thought his wife had received the May 10 denial letter twice, which is inconsistent with DOES practice. *See* Hr'g Tr. 13-14 (R. at Tab 7).

[3] There is also no evidence, much less substantial evidence, that Mr. Admasu could have filed his appeal from Ethiopia within fifteen days even if he had received the notice there. To begin with, it is far from clear that a notice mailed to Ethiopia would even arrive within fifteen days. And even if it did, the appeal form requires a signature from the claimant, *see* Request for Hr'g to Appeal a Determination by a Claims Examiner Involving Unemployment Benefits, Ex. 301 (R. at Tab 2), meaning Mr. Admasu would have had to print, sign, scan, and then either email or fax the form to OAH. Returning it by mail would surely have taken too long. But Mr. Admasu had only limited internet access in Ethiopia, and there is no evidence that he had access to a printer, scanner, or fax.

factors supporting a finding of excusable neglect). There was no substantial evidence to support the ALJ's disregard of this compelling explanation.

The other *Pioneer* factors likewise favor a finding of excusable neglect. With regard to prejudice, there is none. Mr. Admasu's former employer did not show up at the hearing, Final Order 1 (A1), and there is no evidence in the record that its failure to appear was the result of Mr. Admasu's delay, *see id.* at 1 n.1 (A1 n.1) (noting that the scheduling order was mailed to the employer's address and not returned by the postal service). Nor is there any evidence in the record that the delay would have affected the employer's ability to present evidence to OAH, had it chosen to appear. Accordingly, the employer suffered no prejudice. *See Estate of Presgrave v. Stephens*, 529 A.2d 274, 278 (D.C. 1987) (no prejudice where party had opportunity to present evidence at hearing but chose not to).

The length of the delay and its potential impact on judicial proceedings also support a finding of excusable neglect. Mr. Admasu filed his appeal approximately two months after the statutory appeals period had run. This is commensurate with other cases in which this Court has found excusable neglect. *E.g.*, *Savage-Bey*, *supra*, 50 A.3d at 1058-59 (appeal filed two-and-a-half months late); *District of Columbia v. Watkins*, 684 A.2d 395, 397 (D.C. 1996) (motion for relief from judgment filed two months out of time); *District of Columbia v. Houston*, 842 A.2d 667, 670 (D.C. 2004) (response filed one-and-a-half months late).

The final *Pioneer* factor — whether Mr. Admasu acted in good faith — also strongly supports excusable neglect, and there is no substantial evidence for the ALJ's contrary finding.[4] This Court has defined "good faith" to mean "honest[y], without fraud, collusion, or deceit." *Staves v. Johnson*, 44 A.2d 870, 871 (D.C. 1945) (quoting *Bumgarner v. Orton*, 146 P.2d 67, 69

[4] See *infra* section I.B for a discussion of how the ALJ erred in concluding that Mr. Admasu acted in bad faith.

(Cal. App. Dep't Super. Ct. 1944)). In the specific context of excusable neglect, this Court has held that seeking advice from agency officials and taking prompt action upon learning of one's rights (as Mr. Admasu did here) is evidence of good faith. For example, in *Savage-Bey v. La Petite Academy*, *supra*, 50 A.3d 1055, this Court said that the claimant acted in good faith by seeking advice when she did not receive an expected claims decision and by promptly contacting DOES after suspecting that her claim for benefits had been denied, *see id.* at 1062. Similarly, in *Starling v. Jephunneh Lawrence & Assocs.*, *supra*, 495 A.2d 1157, the Court found that the appellant had acted in good faith when he filed a motion for relief from judgment the day after his attorney returned to the office following the attorney's father's death, *see id.* at 1160; *see also Johnson v. Berry*, 658 A.2d 1051, 1054 (D.C. 1995) (finding "ample" evidence that appellant had acted in good faith where he moved to reinstate his case one day after learning it had been dismissed).

Here, Mr. Admasu acted promptly to secure an appeal upon returning from Ethiopia. Two days after his return — after he had been away *for nearly three months* caring for his dying parents — he went to DOES to ask about the status of his claim. *See* Final Order 2 (A2). Upon being told he could appeal his denial to OAH, *that same day* he filed a notice of appeal. *See id.* Like the claimant in *Savage-Bey*, he sought advice and acted promptly upon learning of his appeal rights. Like the attorney in *Starling*, he acted to secure those rights within days of returning from an extended family emergency. Mr. Admasu's prompt actions following his return from Ethiopia strongly support a finding of excusable neglect.

In sum, all four of the *Pioneer* factors support excusable neglect. The ALJ's refusal to allow Mr. Admasu to appeal out of time was a clear abuse of discretion. *See Savage-Bey*, *supra*,

50 A.3d at 1063 (ALJ abused her discretion in dismissing appeal as untimely where "each of the *Pioneer* factors point[ed] toward satisfaction of the excusable neglect standard").

B. The ALJ's Conclusion that Mr. Admasu Acted Without Good Faith Is Not Supported by Substantial Evidence.

The ALJ held that Mr. Admasu had not shown excusable neglect because he had failed to act in good faith. *See* Final Order 5 (A5). According to the ALJ, "[n]othing in the record suggests . . . [Mr. Admasu] made a good faith effort to meet the [appeal] deadline and failed." *Id.* But her own findings of fact contradict this claim. Earlier in her opinion, the ALJ finds:

> Claimant returned to the United States from Ethiopia on July 21, 2013. On July 23, 2013, Claimant went to a DOES office to ask about his benefits. Claimant was advised that he could appeal the Determination with this administrative court. Claimant's wife had not kept the Determination that had been mailed to Claimant in May, so Claimant obtained another copy of the Determination from DOES. Claimant filed a notice of appeal via facsimile transmission on July 23, 2013.

Id. at 2 (A2).[5] Thus, according to the ALJ's own findings of fact, two days after returning home from Ethiopia Mr. Admasu went to DOES to inquire about his claim, and upon being told he could appeal to OAH, that same day filed a notice of appeal. As explained above, under this Court's precedents, such prompt action is clear evidence of good faith. *See Savage-Bey*, *supra*, 50 A.3d at 1062; *Starling*, *supra*, 495 A.2d at 1160; *Johnson*, *supra*, 658 A.2d at 1054.

The ALJ ignored this evidence, however, focusing instead on the facts that Mr. Admasu left for Ethiopia without notifying DOES and did not tell his wife to "follow up" on the May 10 denial letter. Final Order 5 (A5). But Mr. Admasu explained that he did not tell DOES he was leaving because he had to leave "sudden[ly]," Hr'g Tr. 11 (R. at Tab 7), and there is no evidence in the record to contradict this explanation. And even if Mr. Admasu had given DOES a

[5] These findings of fact omit Mr. Admasu's testimony that he went to DOES a week after he applied for benefits to check on the status of his application. *See* Hr'g Tr. 10 (R. at Tab 7) ("I applied [on March 15, 2013] and I went there after a week."); *see also id.* at 9 ("I was going to the unemployment office, but they were telling me that there was a problem with the claim.").

forwarding address, there is no evidence, substantial or otherwise, that the May 10 letter would have made it to Ethiopia in time for him to act within the fifteen-day deadline.

Nor is it apparent why Mr. Admasu's alleged failure to tell his wife to "follow up" on the May 10 letter is evidence of bad faith. The ALJ found that Mr. Admasu's wife was "newly in this country," Final Order 2 (A2), but did not make any findings of fact regarding her resulting (in)ability to read or comprehend English. Instead, the ALJ based her reasoning on the fact that Mr. Admasu's wife "accurately reported" to Mr. Admasu that his benefits had been denied, which the ALJ thought was "some evidence" that she was capable of understanding the denial letter and capable of communicating "important information" to Mr. Admasu. *Id.* at 4-5. (A4-5). That Mr. Admasu's wife might have been capable of telling Mr. Admasu that his claim for benefits was denied, however, does not mean she was capable of understanding the details of the denial letter or notice of appeal rights, or capable of filing an appeal on Mr. Admasu's behalf (if indeed a spouse can even file an appeal on a claimant's behalf[6]). Moreover, the ALJ's findings ignore Mr. Admasu's testimony that his wife "[did not] know enough English" to "know what to do with the paperwork," and that "[t]o take care of the family" in his absence she had to "work all day." Hr'g Tr. 19 (R. at Tab 7); *see Al-Baseer, supra*, 19 A.3d at 345) (fact that claimant, who was a caretaker, had to "spend[] all of her time caring for" someone else supported finding of excusable neglect). The ALJ's finding that Mr. Admasu failed to act in good faith is not supported by substantial evidence.[7]

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[6] As mentioned in note 3, *supra*, the form for appealing a denial of unemployment benefits to OAH requires a signature from the claimant. *See* Request for Hr'g to Appeal a Determination by a Claims Examiner Involving Unemployment Benefits, Ex. 301 (R. at Tab 2).

[7] The ALJ also said at the OAH hearing that "whoever [Mr. Admasu] left in charge of monitoring [his] application needed to figure out what the appeal rights were," and that "leav[ing] somebody in charge . . . who you know does not know how to cope with being in

C. The ALJ Committed Legal Error by Disregarding the Other Three *Pioneer* Factors.

As outlined above, the *Pioneer* test has four components: "(1) the danger of prejudice to the [other parties], (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith." *Pioneer*, *supra*, 507 U.S. at 395 (numbering added). Of these four, "the excuse given for the late filing must have the greatest import." *Lowry*, *supra*, 211 F.3d at 463.

In her decision, the ALJ correctly identifies the four *Pioneer* factors, but then proceeds to rest her decision entirely on the good faith prong. *See* Final Order 5 (A5) ("Nothing in the record suggests . . . [Mr. Admasu] made a good faith effort to the meet the deadline and failed."); *id.* ("Failing to safeguard important rights when the means were available to [Mr. Admasu] does not demonstrate that [he] acted in good faith."); *id.* ("[S]tretching the 'good cause or excusable neglect' standard to cover the facts of this case would . . . relieve [a party] of even the modest duty to make a good faith effort to file its appeal on time."). Her analysis contains no mention of Mr. Admasu's reasons for filing out of time — his sudden need to travel to Ethiopia to be with his dying parents, his limited internet access, and his wife's unfamiliarity with English — and no mention of potential prejudice. Thus, not only does the ALJ erroneously find that Mr. Admasu

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charge of [the claims process] . . . is not consistent with what the law requires." Tr. 16, 19-20 (R. at Tab 7). That is not the law. Nowhere does the Unemployment Compensation Act or the relevant case law say that a claimant called away on a family emergency must "leave somebody in charge" who is skilled at English. Nor does one's "good faith" turn on the conduct and language capability of a third party. The ALJ had no authority to graft these new requirements onto the remedial unemployment compensation statute. Indeed, the requirement that, in order to vindicate his rights, Mr. Admasu had to find someone proficient in English is particularly offensive and raises substantial concerns under District and federal law regarding language access and protection of linguistic minorities. Such a requirement would be especially harsh for members of immigrant families with limited English skills, who often lack the contacts and resources to find an English-speaking agent for family emergencies.

acted in bad faith, see *supra* section I.B, but she compounds this error by making it the entire basis of her decision.

The ALJ's disregard of the other *Pioneer* factors — and particularly of the most important factor, Mr. Admasu's reasons for filing out of time — was legal error. Accordingly, her decision cannot stand. *See Longus v. United States*, 52 A.3d 836, 845 (D.C. 2012) (court commits legal error and thus abuses its discretion when it bases ruling on incorrect legal principles).

CONCLUSION

For the foregoing reasons, this Court should reverse the decision below and enter an order directing the ALJ to treat Mr. Admasu's claim as timely filed. Additionally, because this is the unusual case where a remand for further proceedings would be futile — the party with the burden below failed to appear before OAH and has chosen not to submit a brief to this Court[8] — the Court should further direct the ALJ to enter a merits determination in Mr. Admasu's favor finding him entitled to unemployment benefits.

[8] Mr. Admasu's former employer did not identify counsel within the deadline set forth in this Court's January 16, 2014 order. Pursuant to that order, the employer is therefore barred from submitting a brief.

Respectfully submitted,

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ADDENDUM A

Final Order in *Admasu v. 7-11 Food Store #11731G/21926D*,
No. 2013-DOES-01325, Office of Administrative Hearings (Aug. 19, 2013)

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Petitioner's Brief to be delivered by first-class mail, postage prepaid this _____ day of April 2014 to each of the following:

7-11 Food Store #11731G/21926D
c/o Human Resources
1722 Routh St.
Dallas, TX 75201-2514
Respondent Pro Se

John C. Keeney, Jr.