

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1501

Late Application for Review Dismissed

PROCEDURAL HISTORY: On December 11, 2012, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from August 26, 2012 through December 8, 2012 (weeks 35-12 through 49-12) (decision # 130524). Claimant filed a timely request for hearing. On January 7, 2014, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for January 17, 2013. On January 17, 2013, ALJ McGorin issued Hearing Decision 13-UIB-01608-D, dismissing claimant's request for hearing for failure to appear. On February 6, 2013, Hearing Decision 13-UIB-01608-D became final without an application for review having been filed.

On May 19, 2014, the Department served notice of an administrative decision (decision #134407) assessing a \$4,716 overpayment for the periods September 2, 2012 through October 6, 2012 (weeks 36-12 through 40-12) and October 14, 2012 through November 10, 2012 (weeks 42-12 through 45-12) based on decision #13054. On June 6, 2014, claimant filed a request for hearing on decisions #130524 and #134407. On June 11, 2014, the Office of Administrative Hearings issued notice of two hearings scheduled for June 24, 2014: one at 8:15 a.m. and the other at 9:30 a.m.

On June 24, 2014, claimant failed to appear for the 8:15 a.m. hearing, and ALJ Shoemake issued Hearing Decision 14-UI-20253, dismissing claimant's request for hearing on decision # 130524 for failure to appear. On July 11, 2014, claimant filed a timely request to reopen. On August 14, 2014, ALJ Frank conducted a hearing, and on August 22, 2014 issued Hearing Decision 14-UI-23954, dismissing claimant's request to reopen. On September 11, 2014, Hearing Decision 14-UI-23954 became final without an application for review having been filed.

On June 24, 2014, ALJ Shoemake conducted a hearing, and on July 1, 2014 issued Hearing Decision 14-UI-20652, affirming decision #134407. On July 21, 2014, Hearing Decision 14-UI-20652 became final without an application for review having been filed.

On September 12, 2014, claimant filed untimely an untimely application for review of Hearing Decisions 14-UI-23954 and 14-UI-20652.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 14-UI-20652 and 14-UI-23954. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2014-EAB-1478 and 2014-EAB-1501).

ORS 657.270(4) required that claimant's application for review of Hearing Decision 14-UI-20652 be filed no later than July 21, 2014, and the application for review of Hearing Decision 14-UI-23954 be filed no later than September 11, 2014. Claimant's application for review of each hearing decision was filed on September 12, 2014 as shown by the postmark on the envelope in which it was mailed. OAR 471-041-0065(1)(b) (October 29, 2006). OAR 471-041-0070(3) requires that individuals filing late applications for review include with the late application "a written statement describing the circumstances that prevented a timely filing." Although claimant explained why he missed his hearing on decision # 130524 (the decision concerning his availability for work in 2012), and explained why he disagreed with this decision, he provided no explanation why he filed his application for review after the filing deadline expired.

Because the applications for review were filed after the 20-day deadline provided by ORS 657.270(4), and good cause to extend the time allowed has not been shown, the applications for review must be dismissed.

DECISION: The applications for review filed September 12, 2014 are dismissed. Hearing Decisions 14-UI-20652 and 14-UI-23954 remain undisturbed.

Tony Corcoran and J. S. Cromwell;
Susan Rossiter, not participating.

DATE of Service: September 22, 2014

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. See ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the website at court.oregon.gov. Once on the website, click on the blue tab for "Materials and Resources." On the next screen, click on the tab that reads "Appellate Case Info." On the next screen, select "Appellate Court Forms" from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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