

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1668

Affirmed
Late Request to Reopen Dismissed

PROCEDURAL HISTORY: On May 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, not for misconduct (decision # 140959). On May 21, 2014, the employer filed a timely request for hearing. On June 3, 2014, the Office of Administrative Hearings (OAH) mailed the parties notice of a hearing scheduled for June 16, 2014. On June 16, 2014, ALJ Holmes-Swanson conducted a hearing at which claimant failed to appear, and on June 18, 2014 issued Hearing Decision 14-UI-19895, concluding the employer discharged claimant for misconduct. On June 26, 2014, claimant filed a timely request to reopen the hearing. On August 1, 2014, OAH mailed the parties notice of a hearing scheduled for August 19, 2014. On August 19, 2014, ALJ Holmes-Swanson conducted a hearing at which claimant failed to appear, and issued Hearing Decision 14-UI-23716, dismissing claimant's request to reopen the June 16, 2014 hearing. On September 26, 2014, claimant filed a request to reopen the August 19, 2014 hearing. On October 8, 2014, ALJ Kangas issued Hearing Decision 14-UI-26608, dismissing claimant's request to reopen the hearing. On October 21, 2014, claimant filed an application for review of Hearing Decision 14-UI-26608 with the Employment Appeals Board (EAB).

Claimant submitted written argument to EAB. Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision. EAB considered the entire hearing record.

FINDINGS OF FACT: (1) Claimant's employment required him to be out of town for four weeks beginning in early August 2014. During that time, claimant was unable to check, and did not have anyone else check, his mail. The August 1, 2014 notice of the August 19, 2014 hearing arrived in claimant's mail in early August, shortly after claimant left to work out of town. Hearing Decision 14-UI-23716 also arrived in claimant's mail while he was working out of town.

(2) In early September 2014, claimant returned home, checked his mail, and learned that he had missed the August 19, 2014 hearing.

CONCLUSIONS AND REASONS: Claimant's late request to reopen the August 19, 2014 hearing is dismissed.

On August 19, 2014, claimant failed to appear at the hearing on his request to reopen the June 16, 2014 hearing. On August 19, 2014, OAH mailed Hearing Decision 14-UI-23716, dismissing claimant's request to reopen the June 16 hearing, to claimant at his address of record at that time. OAR 471-040-0040(1) provides that OAH may reopen the hearing if the party files a written request to reopen within 20 days of the date of mailing of the hearing decision, and has good cause for failing to appear at the hearing. Thus, to have acted timely, claimant needed to file a request to reopen the August 19 hearing no later than September 8, 2014. Claimant filed a late request to reopen on September 26, 2014.

OAR 471-040-0041(1) provides that the period within which a party may request reopening may be extended if the party has good cause for failing to request a reopening within the time allowed and acts within a reasonable time. OAR 471-041-0041(2) defines "good cause" as "when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control." In addition to showing that good cause existed for the delay, the applicant must establish that the request to reopen was filed within a "reasonable time." A "reasonable time" is defined by OAR 471-040-0041(3) to be "seven days after the circumstances that prevented a timely filing ceased to exist."

We infer that claimant left town for work shortly after OAH mailed the notice of hearing on August 1, 2014, and therefore returned home approximately four weeks later, in early September 2014. Assuming claimant returned home and was able to check his mail prior to September 8, he failed to establish good cause for failing to file his request to reopen the hearing by that date. Assuming claimant did not return home until after September 8, he failed to show that he could not have made arrangements to monitor his mail while he was working out of town. Absent such a showing, claimant again failed to establish good cause for filing his request to reopen the hearing by September 8. Finally, claimant failed to show that he filed his late request to reopen the hearing within seven days after he returned home and was able to check his mail. Absent such a showing, claimant failed to establish that he filed his late request to reopen the hearing within a reasonable time, as defined by OAR 471-040-0041(3).

In sum, claimant failed to show good cause existed for his failure to request a reopening in a timely manner, and did not file his request to reopen within a reasonable time after the circumstances he alleged prevented a timely filing ceased to exist. Claimant therefore is not entitled to have the August 19, 2014 hearing reopened. Hearing Decision 14-UI-19895 remains undisturbed.

DECISION: Hearing Decision 14-UI-26608 is affirmed.

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

DATE of Service: December 5, 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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