

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1871

Affirmed
Late Requests for Hearing Denied
Ineligible

PROCEDURAL HISTORY: On August 21, 2014, the Oregon Employment Department (the Department) served notice of two administrative decisions (decisions # 112832 and # 121411) concluding claimant did not actively seek work for the periods of April 27 through May 24, 2014, June 1 through July 5, 2014, and July 13 through July 26, 2014 (weeks 18-14 through 21-14, 23-14 through 27-14, 29-14, and 30-14). On September 8, 2014, the Department served notice of an administrative decision (decision # 155420) concluding claimant was not available for work for the period of July 27 through August 23, 2014 (weeks 31-14 through 34-14). On September 10, 2014, administrative decisions # 112832 and # 121411 became final without a request for hearing having been filed. On September 29, 2014, administrative decision # 155420 became final without a request for hearing having been filed. On October 30, 2014, claimant filed late requests for hearing on all three decisions.

On November 5, 2014, ALJ Kangas issued Hearing Decisions 14-UI-28229, 14-UI-28230, and 14-UI-28234, dismissing claimant's requests for hearing as untimely, subject to claimant's "right to renew" the requests by submitting responses to the "Appellant Questionnaires" attached to the hearing decisions within 14 days of the date the decisions were mailed.¹ On November 14, 2014, the Office of Administrative Hearings (OAH) received claimant's responses. On November 20, 2014 ALJ Kangas issued Hearing Decision 14-UI-29105, re-dismissing claimant's late request for hearing on decision # 112832. On December 9, 2014, claimant filed applications for review of Hearing Decisions 14-UI-28230, 14-UI-28234, and 14-UI-29105 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 14-UI-29105, 14-UI-28230, and 14-UI-28234. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2014-EAB-1869, 2014-EAB-1870 and 2014-EAB-1871).

¹ Hearing Decisions 14-UI-28229, 14-UI-28230, and 14-UI-28234.

CONCLUSION AND REASONS: We agree with the ALJ that the claimant failed to show good cause for filing late requests for hearings on the administrative decisions at issue.

Timeliness of Claimant's Applications for Review of Hearing Decisions 14-UI-28230 and 14-UI-28234

An application for review is timely if it is filed within 20 days of the date that OAH mailed the hearing decision sought to be reviewed. The filing period may be extended a reasonable time if a party shows good cause for the late filing; "good cause" exists if the party shows evidence that factors or circumstances beyond the party's control prevented a timely filing. ORS 657.270(6); OAR 471-041-0070 (October 29, 2006). Claimant's applications for review of Hearing Decisions 14-UI-28230 and 14-UI-28234 were filed on December 9, 2014 – more than 20 days from the date on which OAH mailed these decisions, on November 5, 2014. Claimant has, however, shown good cause for failing to timely file applications for review of these hearing decisions.

On November 5, 2014, the OAH issued Hearing Decisions 14-UI-28229, 14-UI-28230, and 14-UI-28234, dismissing as untimely claimant's late hearing requests, subject to claimant's right to renew by submitting questionnaires that asked claimant to explain why the hearing requests were late. Although claimant timely submitted questionnaires in response to all three hearing decisions, the ALJ addressed only one of the responses. On November 20, 2014, she issued Hearing Decision 14-UI-29105, re-dismissing claimant's request for hearing on decision # 112832. The ALJ took no action on claimant's responses to Hearing Decisions 14-UI-28230 and 14-UI-28234.

The ALJ's error in failing to address the responses claimant submitted to two of the hearing decisions issued on November 5, 2014 was a circumstance beyond claimant's reasonable control. Accordingly, claimant had good cause for failing to timely file his applications for review of two of these decisions -- Hearing Decisions 14-UI-28230 and 14-UI-28234.

Claimant's Late Requests for Hearings

A request for hearing on an administrative decision must be filed within 20 days of the date on which the decision was mailed to an individual's last known address. ORS 657.259. The 20 day time limit may be extended for good cause, however. ORS 657.875. Good cause is defined, in part, as a failure to act that occurs because of factors or circumstances beyond an individual's control. OAR 471-040-0010(1) (December 3, 2006). Claimant provided the same reasons for filing late requests for hearing in all three cases: he asserted that he "[d]id not realize I had a right to appeal."

Each of the administrative decisions claimant received clearly stated that if claimant did not agree with the decision, he should consult the enclosed information for his appeal rights. It was well within claimant's reasonable control to carefully read the decisions and understand his appeal rights. Accordingly, claimant failed to show that his failure to file timely hearing requests was due to circumstances beyond his reasonable control. His late requests for hearings must be dismissed.

DECISION: Hearing Decisions 14-UI-29105, 14-UI-28230, and 14-UI-28234 are affirmed. Administrative decisions # 112832, # 121411 and # 155420 remain undisturbed.

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

DATE of Service: December 15, 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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