

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-0027

Affirmed
Late Request for Hearing Dismissed
Disqualification

PROCEDURAL HISTORY: On October 3, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 80428) which concluded claimant was not available for work from June 29, 2014 through August 16, 2014 (weeks 27-14 through 33-14). On October 23, 2014, administrative decision # 80428 became final without a request for hearing having been filed. On November 13, 2014, claimant filed a late request for hearing. On November 25, 2014, ALJ Kangas issued Hearing Decision 14-UI-29341, dismissing claimant's request for hearing as untimely, subject to claimant's "right to renew" the request by submitting responses to the "Appellant Questionnaire" attached to the hearing decision within 14 days of the date the decision was mailed.¹ On November 28, 2014, the Office of Administrative Hearings (OAH) received claimant's response. On December 17, 2014, the OAH issued a "Cancellation of Hearing Decision" for Hearing Decision 14-UI-29341. On December 31, 2014, ALJ Triana conducted a hearing, and on January 7, 2015 issued Hearing Decision 15-UI-31436, re-dismissing claimant's late request for hearing. On January 12, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On August 1, 2014, the Department served notice of an administrative decision which concluded that claimant was ineligible for benefits for the week of July 13 through 19, 2014 (week 29-14), because he failed to complete the iMatchSkills welcome process. Claimant filed a timely request for hearing on this decision.

(2) On September 17, 2014, ALJ Lohr conducted a hearing and issued Hearing Decision 14-UI-25467, concluding that claimant was ineligible for benefits for the period July 13 through August 2, 2014 (weeks 29-14 through 31-14) because of his failure to participate in the iMatchSkills process. On September 19, 2014, claimant filed a timely application for review of this hearing decision with EAB.

¹ Hearing Decision 14-UI-29341.

(3) On October 2, 2014, a Department representative contacted claimant to obtain information about his availability for work from June 29 through August 16, 2014 due to a possible lack of transportation. Claimant told the representative that he was going to submit a letter to EAB about the decision concerning his ineligibility due to failure to complete the iMatchSkills welcome process, and would also raise the transportation issue in his letter. The representative explained that she had not yet, but was going to, issue a decision regarding his availability for work due to a lack of transportation; she also explained that the transportation issue was separate from the iMatchSkills issue. The representative told claimant that once he got the transportation decision, he should request a hearing if he disagreed with the decision. Transcript at 39-40.

(4) Also on October 2, 2014, claimant sent a letter by fax to EAB; claimant knew and understood that the letter concerned his application for review of the hearing decision that denied him benefits because of his failure to participate in the iMatchSkills welcome process. Transcript at 18.

(5) On October 5, 2014, claimant received administrative decision # 80428 which concluded he was not available for work from June 29, 2014 through August 16, 2014 (weeks 27-14 through 33-14)..

(6) In early November 2014, claimant received Appeals Board Decision 2014-EAB-1517 which affirmed Hearing Decision 14-UI-25467, the decision that concluded claimant was ineligible for benefits from July 13 through August 2, 2014 (weeks 29-14 through 31-14) because he failed to complete the iMatchSkills welcome process.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant has not shown good cause for filing a late request for hearing on decision # 80428.

ORS 657.269 requires that a request for hearing on an administrative decision must be filed within 20 days of the date on which the decision was mailed. The 20 day time limit may be extended a “reasonable time” upon a showing of “good cause.” ORS 657.285. “Good cause” exists when a failure to act results from an excusable mistake or factors beyond a party’s reasonable control. OAR 471-040-0010(1) (February 10, 2012). “Good cause” does not include a failure to understand the implications of a decision. OAR 471-040-0010(1)(b)(B). A “reasonable time” is seven days after the date on which the circumstances that prevented a timely filing cease to exist. OAR 471-040-0010(3).

Claimant asserted that he did not timely file a request for hearing on the October 2, 2014 decision concerning his availability for work because he did not understand that he was required to file a request for hearing on the October 3, 2014 decision that found he was not available for work due to transportation issues. Claimant believed that the transportation issue would be addressed by the EAB because of the September 19, 2014 application for review he filed on the hearing decision that found him ineligible for benefits based on his failure to participate in the iMatchSkills process. Claimant’s failure to understand the implications of the October 3, 2014 decision does not provide good cause for filing a late hearing request.

DECISION: Hearing Decision 15-UI-31436 is affirmed.

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

DATE of Service: January 23, 2015

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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