

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0089

Affirmed
Late Request to Reopen Dismissed

PROCEDURAL HISTORY: On September 17, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 84600). On October 7, 2014, decision # 84600 became final without a request for hearing having been filed. On October 8, 2014, claimant filed a late request for hearing. On October 16, 2014, ALJ Kangas issued Hearing Decision 14-UI-27034, 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 October 30, 2014, the Office of Administrative Hearings (OAH) received claimant's timely response.

On November 7, 2014, the OAH mailed notice of a hearing scheduled for November 19, 2014 at 8:15 a.m., at which claimant failed to appear. On November 19, 2014, ALJ Frank issued Hearing Decision 14-UI-28930, re-dismissing claimant's request for hearing because claimant failed to appear. On December 9, 2014, Hearing Decision 14-UI-28930 became final without an application for review or timely request to reopen having been filed. On December 10, 2014, claimant filed a late request to reopen the hearing on the Department's administrative decision # 84600.

On January 12, 2015, ALJ Kangas issued Hearing Decision 15-UI-31640, denying claimant's late request to reopen. On February 2, 2015, claimant filed a timely application for review of Hearing Decision 15-UI-31640 with the Employment Appeals Board (EAB).

Although these proceedings are based upon the Department's September 17, 2014 decision # 84600, denying claimant benefits because he quit work without good cause, EAB's review in this matter is confined to the matter at issue in Hearing Decision 15-UI-31640, claimant's late request to reopen. Only if claimant were to establish good cause for filing his reopen request late, and good cause for failing to

¹ Hearing Decision 14-UI-27034.

appear at the hearing, and good cause for filing a late request for hearing on decision # 84600, would we then have jurisdiction to address the merits of the work separation matter itself. Because we have determined, for the reasons explained below, that claimant did not have good cause to file a late request to reopen, the issues of claimant's late request for hearing and work separation cannot be addressed.

FINDINGS OF FACT: Claimant's December 10, 2014 request to reopen did not include any statement by claimant explaining why he filed the request one day late, nor did he provide any reasons why he missed the November 19th hearing. Claimant's request consisted only of a new fax cover sheet and the same materials claimant had already submitted in October 2014 when he returned the appellant questionnaire. The reason or reasons that caused claimant to miss the December 9th filing deadline, and to miss the November 19, 2014 hearing are unknown.

CONCLUSIONS AND REASONS: Claimant's late request to reopen is denied.

Under ORS 657.270, parties who fail to appear at a hearing may file a request to reopen the hearing within 20 days of the date the hearing decision was mailed. If parties miss that deadline, they may still request that the hearing be reopened, but, before the request may be considered, they must first show that they had "good cause" to extend the filing period for filing requests to reopen, and that they filed the late request within a "reasonable time" after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041. "Good cause" means an excusable mistake or factors beyond the party's reasonable control prevented the timely filing. OAR 471-040-0041(2). A "reasonable time" is defined as seven days. OAR 471-040-0041(3). The party requesting reopening must provide a written statement with the request explaining the reason or reasons for filing a late request to reopen. OAR 471-040-0041(4).

To be timely, claimant had to file his request to reopen by December 9, 2014; claimant filed his request one day late on December 10, 2014. Because he missed the filing deadline, in order for his request to reopen to be considered, he must first show that he had "good cause" to extend that deadline. Claimant failed to show good cause. First, claimant did not provide a written statement explaining his reasons for filing his request after the deadline expired. Second, even if we considered the allusions in his argument to having received psychological treatment during recent months, which we cannot for the reasons that follow, he did not make any attempt to describe his medical problems, much less link his medical problems to the reasons he missed deadlines or failed to appear at the hearing, nor did he provide sufficient information from which we could reasonably infer a causal connection between his medical problems and the missed deadlines, missed hearing, and failure to explain the reasons for both. Therefore, we agree with the ALJ that claimant has not shown that an excusable mistake or factors beyond his reasonable control caused him to fail to request reopening within the time allowed. Because he did not show good cause, his late request to reopen must be denied.

In his written argument, claimant stated that he is "requesting that this whole situation be given a new outlook of an onion," alluded to psychological treatment had had received during the past months, then described some circumstances surrounding his work separation. However, we cannot consider claimant's argument because he failed to certify that he provided a copy of his argument to the other parties and included new information without establishing that EAB could consider it, as required by OAR 471-041-0080(2)(a) (October 29, 2006) and OAR 471-041-0090 (October 29, 2006). Even if we had been able to consider claimant's argument, however, the outcome of this decision would remain the

same. As previously noted, we have no jurisdiction in this case to address the work separation issue, the late request for hearing issue or even the request to reopen issue. While claimant initially had the right to a hearing on the Department's decision concerning his work separation, he allowed his rights to lapse by failing to timely request a hearing, then by failing to appear at the hearing he was given to show good cause for his late request for hearing, and then by failing to timely request a reopening of the hearing he missed. Accordingly, we have no jurisdiction to consider the circumstances of claimant's work separation, and, at this point, he has exhausted his rights to administrative review of that matter.

DECISION: Hearing Decision 15-UI-31640 is affirmed. Decision # 84600 remains undisturbed.

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

DATE of Service: February 10, 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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