

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0178

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On November 24, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant failed to attend a reemployment and eligibility assessment as directed by the Department. On December 15, 2015, that decision became final without claimant having filed a request for hearing. On December 29, 2014, claimant filed a late request for hearing. On January 21, 2015, ALJ Kangas issued Hearing Decision 15-UI-32098, dismissing claimant's request for hearing subject to claimant's "right to renew" the request by replying to an appellant questionnaire within 14 days. On January 27, 2015, the Office of Administrative Hearings (OAH) received claimant's response. On February 25, 2015, ALJ Vincent conducted a hearing, and on February 26, 2015, issued Hearing Decision 15-UI-34167, re-dismissing claimant's request for hearing. On March 2, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On September 11, 2014, claimant filed an initial claim for benefits. Each week from mid-September 2014 through early March 2015 (weeks 37-14 through 9-15), claimant filed a weekly claim for benefits with the Department.¹

(2) In October 2014, claimant changed her address. For well over a month after claimant changed her address, she did not notify the Department of her new address. Claimant did not receive the Department's November 24, 2014 decision, which was returned to the Department by the United States Postal Service as undeliverable.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant's late request for hearing must be dismissed.

¹ We take notice of the dates of claimant's initial and weekly claims, which are contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

ORS 657.269(2) provides that a request for hearing must be filed within 20 days of the date the administrative decision was mailed to the last known address of the appellant. Under ORS 657.875, the 20-day deadline may be extended upon a showing of "good cause." OAR 471-040-0010(1) provides, in pertinent part,

(a) Good cause includes but is not limited to:

(A) Failure to receive a document because the Employment Department . . . mailed it to an incorrect address despite having the correct address;

* * *

(b) Good cause does not include:

(A) Failure to receive a document due to not notifying the Employment Department . . . of an updated address while the person is claiming benefits . . .

In this case, the Department correctly mailed the administrative decision at issue to claimant's last known address. Claimant did not receive the decision because claimant failed to notify the Department of her updated address, despite claiming benefits before, during and for an extended period of time after she changed her address. Under the referenced rule, claimant's failure to receive the administrative decision is specifically excluded from constituting good cause for a late filing. Because claimant did not show that she had good cause for her late filing, the filing deadline may not be extended, and her late request for hearing must be dismissed.

DECISION: Hearing Decision 15-UI-34167 is affirmed.

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

DATE of Service: March 27, 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 Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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