

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0367

Affirmed
Request to Reopen Denied
No Disqualification

PROCEDURAL HISTORY: On December 2, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 75533). Claimant filed a timely request for hearing. On January 30, 2015, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for February 13, 2015 at 8:15 a.m. The notice of hearing was sent to the wrong address for the employer and the employer did not appear at the hearing. On February 13, 2015, ALJ Frank conducted a hearing and on February 20, 2015 issued Hearing Decision 15-UI-33832, concluding the employer dismissed claimant, but not for misconduct. On February 23, 2015, the employer notified OAH by phone that it did not attend the hearing because it had not received notice of the hearing. During the February 23, 2015 phone conversation, OAH informed the employer of the “reopen process”. DR Exhibit 6. On March 12, 2015, Hearing Decision 15-UI-33832 became final without an application for review with the Employment Appeals Board (EAB) having been filed.

On March 24, 2015, the employer submitted by fax a late request to reopen. DR Exhibit 5. On March 31, 2015, ALJ Kangas reviewed claimant’s late request to reopen and issued Hearing Decision 15-UI-36007, denying claimant’s request and leaving Hearing Decision 14-UI-33832 undisturbed. On April 2, 2014, the employer filed an application for review with the EAB.

CONCLUSIONS AND REASONS: Claimant’s request to reopen must be denied.

OAR 471-040-0041 provides that the period within which a party may request reopening may be extended if (a) the party had good cause for failing to request reopening within the time allowed, and (b) the party acted within a reasonable time after discovering a hearing had taken place. Here, the employer had good cause for missing the hearing because it did not receive notice of the hearing, which was sent to the wrong address. The employer learned of the hearing decision during a phone conversation with OAH on February 23, 2015. During the February 23, 2015 phone conversation, OAH informed the employer of the “reopen process”. DR Exhibit 6. OAR 471-040-0041(3) defines a

“reasonable time” to request reopening as seven days after the circumstances that prevented a timely filing ceased to exist. The employer provided no explanation either in its request to reopen with OAH or in its application for review with the EAB why it waited until March 24, 2015 – over a month from the date on which it learned about the hearing notice it never received -- to request reopening. Therefore, the employer has not shown that it acted within a reasonable time after the circumstances that prevented the timely filing ceased to exist. The employer’s reopen request is denied.

DECISION: Hearing Decision 15-UI-36007 is affirmed. Hearing Decision 14-UI-33832 remains undisturbed.

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

DATE of Service: April 6, 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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