

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-1050

Reversed
Late Request for Hearing Allowed
Hearing on Decision # 94619 Required
(Audencia en Decision #94619 Necesaria)

PROCEDURAL HISTORY: On June 24, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 94619) concluding that claimant was not available for work from April 26 through June 20, 2015 (weeks 17-15 through 24-15). On July 14, 2015, decision # 94619 became final without a request for hearing having been filed. On August 3, 2015, claimant filed an untimely request for hearing. On August 13, 2015, ALJ Triana conducted an interpreted hearing and on August 14, 2015, issued Hearing Decision 15-UI-43404, dismissing claimant's hearing request. On September 2, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On June 24, 2015, the Department sent claimant the following three administrative decisions: decision # 90425, which concluded that claimant voluntarily left work without good cause; decision # 111343, which concluded that claimant was not available for work from May 10 through May 23, 2015 (weeks 19-15 and 20-a5); and decision # 94619, which concluded that claimant was not available for work from April 26 through June 20, 2015 (weeks 17-15 through 24-15).

(2) Claimant received all three decisions soon after they were mailed. Claimant is a native Spanish speaker with no formal education in English. The section entitled "Legal Conclusion" in decisions # 111343 and # 94619 contained the following statement –"The claimant was not available for work," which was translated into Spanish as "El solicitante no estaba disponible para trabajar." Each decision included a form to use to request a hearing; each form contained the following statement, which was not translated into Spanish: "A separate request must be filed for each decision you wish to appeal."

(Emphasis in the original). Claimant read the Spanish translation of the “Legal Conclusion” in decisions # 111343 and # 94619. Because the statement was the same on each decision, he concluded that the Department may have mistakenly sent him two copies of the same decision. Audio recording at 58:05 and 58:51. As a result of this conclusion, claimant believed it was only necessary to submit two hearing requests. On June 30, 2015, claimant faxed forms to the Office of Administrative Hearings (OAH) to request a hearing on decisions # 90425 and # 111343.

(3) On July 9 and July 20, 2015, claimant spoke with Department representatives to ask for assistance and advice in preparing for the hearings he had requested on decisions # 90425 and # 111343. Audio recording at 1:10.

(3) Claimant also requested assistance from Legal Aid Services of Oregon. On July 28, 2015, he met with a Legal Aid attorney, who explained that it was necessary to file a separate hearing request on decision # 94619. On August 3, 2015, claimant’s attorney filed a request for hearing on decision # 94619

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that claimant has shown good cause for filing a late hearing request.

A request for hearing must be filed within 20 days of the date the decision was mailed to a party’s last known address. ORS 657.269. This 20-day time limit can be extended a reasonable time upon a showing of good cause. ORS 657.875. “Good cause” exists when a party’s failure to timely file results from an excusable mistake or from factors beyond the party’s reasonable control. OAR 471-040-0010(1) (February 10, 2012). A “reasonable time” is defined as seven days from the date on which the circumstances “that prevented a timely filing ceased to exist.” OAR 471-040-0010(3).

On June 24, 2015, the Department sent three decisions to claimant, an individual with limited English proficiency. Because the Spanish translation of the “Legal Conclusion” on two of the decisions was the identical, claimant mistakenly concluded that the Department probably erred by sending him two copies of the same document. Although the hearing form claimant received with the decisions specified that a separate hearing request must be filed for each decision he wished to appeal, claimant was unable to read this warning because it was not translated into Spanish. Claimant erroneously concluded that he only needed to file hearing requests for two decisions, decisions # 11343 and # 90425, and timely submitted these requests to the OAH. We conclude that claimant’s failure to timely file a third hearing request on decision # 94619 resulted from an excusable mistake.

In Hearing Decision 15-UI-43404, the ALJ found that claimant was confused by the two decisions that seemed to be “almost identical,” and held that claimant’s failure to contact the Department to clear up confusion about the decisions “is not an excusable mistake.” We disagree. The record establishes that claimant erroneously believed the two decisions he received regarding his availability for work (decisions # 94619 and # 111343) were the same, and apparently decided that any differences between the two were not significant. We conclude that the mistaken belief which claimant held was excusable. In addition, claimant thought that he had done everything necessary to appeal the June 24 decisions: he testified that he believed he sent all the correct forms on June 20. Audio recording at 38:02. As a result of his excusably mistaken belief, claimant believed he understood the decisions he had received and saw

no need to consult a Department representative regarding that issue. He sought help from the Department only in preparing for the hearings he requested.

Claimant has shown good cause for filing an untimely request. Claimant filed his late request for hearing on decision # 94619 within a reasonable time as defined by OAR 471-040-0010(3), *i.e.*, 6 days after his attorney told him about the need to do so. Claimant's late request for hearing is therefore allowed and he is entitled to a hearing on the merits of decision # 94619.

DECISION: Hearing Decision 15-UI-43404 is set aside, as outlined above.¹ *Decisión de la Audiencia 15-UI-43404 se deja a un lado, de acuerdo a lo indicado arriba.*

Susan Rossiter and J.S. Cromwell

DATE of Service: September 8, 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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NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.

¹ NOTE: The failure of any party to appear at the hearing OAH schedule on the merits of decision # 94619 will not reinstate Hearing Decision 15-UI-43404 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.