

EMPLOYMENT APPEALS BOARD DECISION

2015-EAB-1639

Affirmed
Late Request to Reopen Denied

PROCEDURAL HISTORY: On March 18, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with Oregon Brewing Company in February 2014 (decision # 120534). On April 7, 2014, decision # 120534 became final without a request for hearing having been filed. On April 18, 2014, the Department served notice of an administrative decision concluding the Department overpaid claimant \$972.00 in unemployment insurance benefits, and assessing a \$145.80 monetary penalty and 8 penalty weeks (decision #194729). On May 6, 2014, claimant filed a telephone request for hearing on decisions # 120534 and #194729.

On May 14, 2014, the Department mailed notice of two hearings, both scheduled for May 29, 2014, one at 8:15 a.m. on decision # 120534 and the other at 9:30 a.m. on decision # 194729. On May 29, 2014, neither party appeared for the 8:15 a.m. hearing. ALJ Vincent conducted the 9:30 a.m. hearing. On May 30, 2014, ALJ Vincent issued Hearing Decision 14-UI-18751, dismissing claimant's request for hearing on decision # 120534 for failure to appear, and on June 5, 2014, issued Hearing Decision 14-UI-19038, concluding that the Department overpaid claimant \$972 in benefits, but concluding that he was not liable for a monetary penalty or penalty weeks. On June 19, 2014, Hearing Decision 14-UI-18751 became final without an application for review or timely request to reopen having been filed. On June 25, 2014, Hearing Decision 14-UI-19038 became final without an application for review having been filed.

On December 18, 2014, claimant filed a late request to reopen the hearing on decision # 120534. On January 2, 2015, ALJ Kangas issued Hearing Decision 15-UI-31232, denying claimant's request. On January 6, 2015, claimant filed a timely application for review of Hearing Decision 15-UI-31232 with the Employment Appeals Board (EAB). EAB's review in this matter is confined to the matter at issue in Hearing Decision 15-UI-31232.

FINDINGS OF FACT: (1) During claimant's May 29, 2014 hearing on the overpayment matter, claimant learned that he had missed a hearing that had been scheduled for earlier the same day.

(2) Within days of May 30, 2014, claimant received the hearing decision dismissing his request for hearing on decision # 120534 for failure to appear.¹ Page 2 of that hearing decision listed instructions for filing a request to reopen, including the 20-day deadline for doing so and alternative instructions in case that deadline was missed.

(3) On June 2, 2014, claimant called the Office of Administrative Hearings to discuss his failure to appear at the May 29, 2014 hearing on decision # 120534. During that call, the employee with whom claimant spoke told claimant he could file a request to reopen the hearing. DR Exhibit 6.

(4) For unknown reasons, claimant waited until December 18, 2014 to file his request to reopen.

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

Under ORS 657.270, parties who fail to appear at a hearing may request that it be reopened. However, the request must either be filed within 20 days of the date the hearing decision was mailed, or, in the alternative, has good cause for failing to file the request within that time. OAR 471-040-0040(1)(b); OAR 471-040-0041(1)(a). "Good cause" means an excusable mistake or factors beyond the party's reasonable control. OAR 471-040-0041(2). Claimant must also show that he filed his request within a "reasonable time," which is defined as seven days, after the circumstances that prevented the timely filing ceased to exist. OAR 471-040-0041(3).

In this case, the hearing decision at issue was mailed on May 30, 2014. 20 days from that date was June 19, 2014. Claimant did not file his request to reopen within that period. Therefore, in order for his request to reopen to be considered, he must first show that he had "good cause" for failing to meet that 20-day deadline. While claimant failed to attend the 8:15 hearing on May 29th because he did not know it was scheduled to occur, claimant learned of the hearing by approximately 9:30 a.m. the same day, received a hearing decision dismissing his hearing for failure to appear that was accompanied by instructions for requesting reopening within a few days of May 30, 2014, and had a conversation with OAH staff on June 2, 2014 during which he was told he could request to reopen the hearing he had missed. Claimant did not explain why, given those factors, he waited from June 2, 2014 until December 18, 2014 to file his request to reopen. Nor, given that claimant had actual notice of this matter within hours of missing the hearing, did claimant establish that his more than 6-month delay in filing the request to reopen in this matter met the "reasonable time" standard. Claimant's late request to reopen must, therefore, be denied.

DECISION: Hearing Decision 15-UI-31232 is affirmed.

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

DATE of Service: January 13, 2015

¹ We infer claimant's receipt from circumstantial evidence that it was mailed to claimant at his address of record on May 30, 2014, and there is nothing in this record suggesting that claimant either did not receive it or that it was returned to the Department as undeliverable.

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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