

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0034-R

Request for Reconsideration Allowed
Hearing Decision 16-UI-50417 Adhered to on Reconsideration

PROCEDURAL HISTORY: On October 23, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from September 20, 2015 through October 17, 2015 based on her school attendance (decision # 114220). On November 12, 2015, decision # 114220 became final without claimant having filed a timely request for hearing. On December 11, 2015, claimant filed a late request for hearing. On December 17, 2015, ALJ Kangas reviewed claimant's request and issued Hearing Decision 15-UI-49550, dismissing claimant's late request subject to claimant's right to renew her request by responding to an appellant questionnaire by December 31, 2015. On December 28, 2015, the Office of Administrative Hearings (OAH) received claimant's request. On January 4, 2015, ALJ Kangas reviewed claimant's questionnaire and issued Hearing Decision 16-UI-50417, re-dismissing claimant's late request for hearing. On January 7, 2016, claimant filed an application for review with the Employment Appeals Board (EAB). On January 11, 2016, EAB issued Appeals Board Decision 2016-EAB-0034, adopting the ALJ's decision in 16-UI-50417. On January 20, 2016, claimant filed a request for reconsideration. This decision is issued pursuant to EAB's authority under ORS 657.290(3).¹

With regard to the late filing, claimant wrote, in essence, that she understood that her benefits were denied based on her school attendance. She then wrote, "I did not file an appeal at that time due to I was still in school and would have been denied again." Based on claimant's statements, it is apparent that claimant intentionally allowed the deadline for requesting a hearing on decision # 114220 to lapse based on her assumption that she would lose the appeal.

Under ORS 657.875 and OAR 471-040-0010, a late request for hearing will only be allowed upon a showing of "good cause," which is defined as "an excusable mistake or factors beyond an applicant's

¹ ORS 471-041-0145(1) (October 29, 2006) provides that any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, among other things. In this case, it is apparent from the record that EAB issued Appeals Board Decision 2016-EAB-0034 prior the expiration of the written argument due date. Claimant subsequently submitted a timely written argument to EAB that complied with the requirements of OAR 471-041-0080. We therefore reconsider our decision in light of claimant's timely-filed written argument.

reasonable control." Claimant did not allege or show that her late filing was caused by a mistake; rather, she intentionally let the deadline lapse. Claimant did not allege or show that a factor beyond her control resulted in a late filing; it was within claimant's reasonable control to file within the appeal period and she chose not to do so. Therefore, claimant did not show "good cause" for the late filing, and her late request for hearing is, correctly, dismissed.

Claimant also provided details about her layoff, school attendance, availability to work. Those details are irrelevant to the only issue before EAB in this case, which is whether or not claimant proved that she had good cause for filing a late request for hearing on decision # 114220. Also in claimant's latest argument, however, claimant again argued that the ineligibility should be lifted, stating:

As of November 12, 2015 I finished my classes and started searching for employment. I have submitted claims with work search history showing I was looking for employment. My circumstances had changed from unavailable to available actively seeking fulltime, part-time, or temporary work. As of December 28th, 2015 I am employed.

As we explained in Appeals Board Decision 2016-EAB-0034, *only the Department can end claimant's period of ineligibility in this matter*, so, to the extent that claimant is asking that EAB end her disqualification as of November 12th, and that she be found eligible for benefits between November 12th and December 28th, *claimant must report her changed circumstances directly to the Department* so that the Department's adjudication staff may reassess her eligibility for benefits by calling the Department directly at (877) 345-3484.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), we adhere to our decision in Appeals Board Decision 2016-EAB-0034, adopting Hearing Decision 16-UI-50417.

DECISION: On reconsideration, Hearing Decision 16-UI-50417 is affirmed.

Susan Rossiter and J. S. Cromwell

DATE of Service: January 20, 2016

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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