

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0365

Hearing Decision 16-UI-55391 Reversed – Late Request for Hearing Allowed
Hearing Decision 16-UI-55380 Reversed and Remanded

PROCEDURAL HISTORY: On October 21, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from June 28, 2015 to September 26, 2015 (decision # 150432). On November 10, 2015, decision # 150432 became final without a request for hearing having been filed. On November 23, 2015, the Department served notice of an administrative decision based on decision # 150432 that assessed a \$4,680 overpayment (decision # 150027). On December 11, 2015, claimant filed a request for hearing on both decisions. On March 11, 2015, ALJ Vincent conducted two hearings, and on March 18, 2016 issued Hearing Decision 16-UI-55391, denying claimant's late request for hearing on decision # 150432, and Hearing Decision 16-UI-55380, affirming decision # 150027. On March 30, 2016, claimant filed applications for review of both decisions with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant had mail delivery problems at her apartment building. Claimant regularly received mail addressed to others, and others received mail addressed to claimant. She notified the United States Postal Service (USPS) and her mail carrier of the problems, but they did not offer her any resolutions and claimant's and others' mail continued to be misdirected.

(2) Claimant did not receive the Department's October 21, 2015 decision when it was mailed, and it was not returned to the Department as undeliverable. On December 4, 2015, claimant received a copy of the decision. On December 5, 2015, claimant prepared a letter in which she requested a hearing on that decision and mailed it to the Department shortly thereafter. On December 11, 2015, the United States Postal Service postmarked the envelope in which claimant mailed her request.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant had good cause to extend the filing deadline for decision # 150432 to December 11, 2015. Hearing Decision 16-UI-55391 must therefore be reversed. Because Hearing Decision 16-UI-55380 was based upon decision # 150432, it must be reversed and remanded pending a decision on the merits of decision # 150432.

ORS 657.269 provides that an individual has 20 days after the date an administrative is mailed to request a hearing. ORS 657.875 provides that deadline may be extended a reasonable time upon a showing of

good cause. OAR 471-040-0010 defines “good cause” as an excusable mistake or factors beyond an applicant’s reasonable control, and “reasonable time” as seven days from the date the circumstances that prevented a timely filing ceased to exist.

Considering claimant’s history of misdirected mail, the fact that claimant did not receive the October 21st decision and it was not returned to the Department as undeliverable make it more likely than not that the decision was misdirected. Claimant’s mail carrier’s misdirection of the decision was a factor beyond claimant’s reasonable control. She therefore had good cause to file a late request for hearing.

In Hearing Decision 16-UI-55391, the ALJ concluded that claimant’s late request for hearing had to be dismissed because it was not filed within a reasonable time. The ALJ reasoned that the circumstances that prevented claimant from filing a timely request for hearing ceased to exist on November 23rd, when the Department mailed her a copy of decision # 150432, and claimant waited 18 days before requesting a hearing, which was longer than the seven day period considered “reasonable” under the applicable rule. *See* Hearing Decision 16-UI-55391 at 2. We disagree. Although the copy of decision # 150432 was mailed to claimant on November 23rd, the circumstances that prevented her from requesting a hearing did not cease until she received it on December 4, 2015. Therefore, December 4th is the proper starting date from which to measure whether claimant filed her request within 7 days. Claimant argued that she filed the request for hearing on decision # 150432 on December 5th when she placed it in a mailbox. OAR 471-040-0005(4)(b) provides, however, that the filing date of a document filed by mail is the postmarked date affixed to the envelope by the USPS. In this case, the postmark date is December 11th. December 11th is seven days from December 4th. Therefore, claimant filed her request for hearing within a reasonable time after the circumstances that prevented her timely filing, specifically, her non-receipt of decision # 150432, ceased to exist. Claimant’s request for hearing on decision # 150432 is allowed.

DECISION: Hearing Decision 16-UI-55391 is set aside, as outlined above. Hearing Decision 16-UI-55380 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and J. S. Cromwell;
D. P. Hettle, not participating.

DATE of Service: April 4, 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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