

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0387

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On June 22 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 81933) concluding that claimant was not available for work from October 5, 2014 through April 25, 2015 (weeks 41-14 through 16-15). On July 13, 2015, decision # 81933 became final without a request for hearing having been filed. On July 31, 2015, the Department issued an administrative decision (decision # 142559) concluding that because of decision # 81933, claimant was overpaid unemployment benefits in the amount of \$6,084. On August 19, 2015, claimant filed an untimely request for hearing on decision # 81933 and a timely request for hearing on decision # 142559.

On November 16, 2015, the Office of Administrative Hearings issued notice of hearings scheduled for December 1, 2015. Claimant failed to appear at these hearings and on December 1, 2015, ALJ Murdock issued the following hearing decisions: Hearing Decision 15-UI-48576 dismissed claimant request for hearing on decision # 142559 and Hearing Decision 15-UI-48577 dismissed claimant's request for hearing on decision # 81933. On December 21, 2015, Hearing Decisions 15-UI-48576 and 15-UI-48577 became final.

On March 10, 2016, claimant filed untimely requests to reopen. In her requests to reopen, claimant stated that "I did not receive any information about this process, such as a handbook or guidelines explaining the requirements" and "missed my appeal date because I received a phone call from a man in your office a week before the date and he said appealing was pointless because I would lose." On March 14, 2016, ALJ Kangas issued Hearing Decision 16-UI-54935, dismissing claimant's request to reopen the hearing on decision # 81933. On March 22, 2016, ALJ Kangas issued Hearing Decision 16-UI-55566, dismissing claimant's request to reopen the hearing on decision # 142559. On April 4, 2016,

claimant filed applications for review of Hearing Decisions 16-UI-54935 and 16-UI-55566 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-54935 and 16-UI-55566. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0387 and 2016-EAB-0388).

EAB considered claimant's written argument in reaching this decision.

CONCLUSION AND REASONS: We agree with the ALJ and conclude that claimant failed to demonstrate good cause for failing to timely file requests to reopen.

ORS 657.270(5) provides that a hearing may be reopened upon request of any party that failed to appear at the hearing if, among other requirements, the party requests reopening within 20 days of the date on which the hearing decision was mailed. This 20-day period may be extended if the party requesting reopening demonstrates good cause for failing to timely file the request. OAR 471-040-0041(1) (February 10, 2012). "Good cause" exists if failure to timely file the request resulted from an excusable mistake or factors beyond the party's reasonable control. OAR 471-040-0041(2).

Hearing Decisions 15-UI-48576 and 15-UI-48577, which dismissed claimant's requests for hearings because she failed to appear, were mailed on December 1, 2015. Claimant filed her requests to reopen these decisions on March 10, 2015 – considerably more than 20 days from the dates on which the decisions were mailed. Although claimant provided no direct explanation why she did not timely file her requests to reopen, she asserted that she did "not receive information about the process, such as a handbook or guidelines explaining the requirements" and "missed my appeal date because I received a phone call from a man in your office a week before the date and he said appealing was pointless because I would lose." We note, however, that both hearing decisions that claimant received included an explanation how a party could request reopening if the party missed the hearing, stated the requirements for such a request, and provided citations to the relevant administrative rules. Hearing Decisions 15-UI-48576 and 15-UI-48577 at 2. It was well within claimant's reasonable control to carefully read the decisions and determine the appropriate procedure for requesting reopening of a hearing. Claimant has therefore failed to show good cause for filing late requests to reopen, and the ALJ did not err by dismissing them.

DECISION: Hearing Decisions 16-UI-54935 and 16-UI-55566 are affirmed.

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

DATE of Service: April 11, 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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