

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0464

PROCEDURAL HISTORY: On September 4, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 120543). On September 24, 2015, decision # 120543 became final without a timely request for hearing having been filed. On October 6, 2015, the Department served notice of a second administrative decision based on decision # 120543 assessing a \$665 overpayment (decision # 105129). On October 26, 2015, decision # 105129 became final without a timely request for hearing having been filed. On March 24, 2016, claimant filed late requests for hearing on both decisions.

On March 28, 2016, ALJ Kangas issued Hearing Decision 16-UI-55940, dismissing claimant's request for hearing on decision # 105129 subject to her right to renew the request by responding to an appellant questionnaire by April 11, 2016. On March 30, 2016, ALJ Kangas issued Hearing Decision 16-UI-56078, dismissing claimant's request for hearing on decision # 120543 subject to her right to renew the request by responding to an appellant questionnaire by April 13, 2016. The Office of Administrative Hearings (OAH) did not receive a response to either questionnaire, and, on April 18, 2016, Hearing Decision 16-UI-55940 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On April 19, 2016, Hearing Decision 16-UI-56078 became final.

On April 20, 2016, claimant filed late applications for review with EAB.

Claimant filed her applications for review using the form associated with Hearing Decision 16-UI-56078. We construed her application to apply to both cases because of the similarities between the cases, including the interrelated subject matters, the fact that the outcome of one depended on the finality of the other, the similarity of the decision and case numbers, and the proximity of the dates involved. Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-55940 and 16-UI-56078. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0464 and 2016-EAB-0466).

With claimant's application for review, she submitted a response to the appellant questionnaire. Because the deadlines for submission of the questionnaire responses to OAH have expired, we construed claimant's questionnaire responses as a written argument.

CONCLUSIONS AND REASONS: Claimant's late applications for review must be dismissed.

ORS 657.270 required claimant's applications for review to be filed by April 18, 2016 and April 19, 2016. Claimant filed her applications for review on April 20, 2016, as shown by the postmark date on the envelope in which the applications were mailed. OAR 471-041-0065 (October 29, 2006). Claimant's applications for review were, therefore, late.

EAB may allow a party's late application for review only if she establishes she had "good cause" to extend the deadline a "reasonable time." ORS 657.875; OAR 471-041-0070 (October 29, 2006). "Good cause" means "factors or circumstances beyond the applicant's reasonable control prevented a timely filing," and "reasonable time" means "seven days after the circumstances that prevented a timely filing ceased to exist." OAR 471-041-0070(2).

In claimant's written argument, she wrote that her appeal was late because she "didn't receive notice in time to respond for an appeal," and that "as soon as [she] became aware [she] contacted the department inquiring details." She also dated the document "03/31/16."

Department records show that, on March 24, 2016, the date claimant filed her late requests for hearing in these matters, claimant updated her address with the Department to 125 NW 14th Place in Gresham.¹ OAH mailed Hearing Decisions 16-UI-55940 and 16-UI-56078 to claimant at that address. Sometime after that date, claimant apparently changed her address to a PO Box in Gresham, as shown by the return address she wrote on the envelope containing her application for review to EAB. We reasonably infer that the reason claimant might not have "receive[d] notice in time to respond for an appeal" is that sometime between March 24, 2016 and the date the hearing decisions were mailed on March 28th and March 30th, claimant must have changed her address without notifying the Department or OAH of her address change. Because it is more likely than not that any failure on claimant's part to file a timely application for review would, therefore, be the result of claimant's failure to keep the Department and/or OAH informed of her correct address, at a time when claimant knew she had two cases with the Department and pending appeals, we cannot conclude that any failure on claimant's part to receive the hearing decisions was the result of "factors or circumstances outside her reasonable control."

That said, however, the record fails to show that claimant did not receive the hearing decisions "in time to respond for an appeal" as she claimed. The materials claimant submitted to EAB with her application for review included the "appellant questionnaire" form OAH mailed to claimant on March 28, 2016, which claimant signed and dated "03/31/16," just three days later. It is, therefore, more likely than not that claimant received the hearing decisions at issue on or before March 31, 2016, with plenty of time to file a timely response to the appellant questionnaires or to file timely applications for review, and, whether deliberately or inadvertently, failed to do so before all of the deadlines expired, which does not constitute "good cause" since there is nothing to suggest that, having received the documents within a few days of when they were mailed, filing the documents on time was beyond claimant's reasonable control. The fact that claimant signed the form on March 31, 2016 but waited another 20 days to file them also demonstrates that claimant did not file her late applications for review within the 7-day "reasonable time" period.

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

For the reasons explained, claimant's late applications for review must be dismissed because she lacked good cause and did not file them within a reasonable time. The hearing decisions dismissing claimant's late requests for hearing remain undisturbed, and claimant is not entitled to a hearing on the merits of the Department's decisions # 120543 and 105129.

DECISION: The applications for review filed April 20, 2016 are dismissed. Hearing Decisions 16-UI-55940 and 16-UI-56078 remain undisturbed.

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

DATE of Service: April 26, 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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