

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0554

Affirmed
Request to Reopen Denied

PROCEDURAL HISTORY: On January 14, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 144932) concluding that claimant was not available for work from December 20, 2015 through January 9, 2016 (weeks 51-15 through 1-16). Claimant filed a timely request for hearing. On February 10, 2016, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for February 24, 2016. On February 24, 2016, ALJ M. Davis issued Hearing Decision 16-UI-53612, dismissing claimant's hearing request for failure to appear at the hearing. On March 15, 2016, Hearing Decision 16-UI-53612 became final, without a request to reopen or application for review having been filed. On April 5, 2016, claimant filed an untimely request to reopen. On April 11, 2016, ALJ Kangas issued Hearing Decision 16-UI-56981, denying claimant's request to reopen as untimely. On May 2, 2016, Hearing Decision 16-UI-56981 became final without an application for review having been filed. On May 5, 2015, claimant filed an untimely application for review with the Employment Appeals Board (EAB).¹

LATE APPLICATION FOR REVIEW: ORS 657.270(6) required that claimant's application for review of Hearing Decisions 16-UI-53134 be filed no later than May 2, 2016. Claimant's application for review, which was filed on May 5, 2015, was therefore untimely. OAR 471-041-0070 (August 30, 2011) provides that the filing period may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875. "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-0070(2)(a).

The record shows that claimant's April 5, 2016 request to reopen listed the following as his current address: 4926 SW 56th Ave., Apt. 217, Portland OR 97227. OAH mailed Hearing Decision 16-UI-56981 to this address, however: 5834 NE 24th Ave., Portland OR 97211. We conclude that OAH's failure to mail the hearing decision at issue to claimant's correct and current address of record

¹ Claimant mailed his application for review; the envelope in which it was mailed had no postmark, however. In accordance with OAR 471-041-0065(1), we determine the most probable date of filing to be May 5, 2016, the date on claimant's application for review.

constituted a circumstance beyond claimant's reasonable control that more likely than not prevented him from timely filing his application for review. Claimant's untimely application for review is therefore allowed.

LATE REQUEST TO REOPEN: EAB reviewed the entire record in this case. On *de novo* review and pursuant to ORS 657.275(2), Hearing Decision 16-UI-56981, the hearing decision denying claimant's request to reopen as untimely, is **adopted**.

DECISION: Hearing Decision 16-UI-56981 is affirmed.

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

DATE of Service: May 17, 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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