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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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<p>EMPLOYMENT APPEALS BOARD DECISION 2016-EAB-0592</p>
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Affirmed
Late Requests for Hearing Dismissed
Disqualified
Ineligible Week 6-16

PROCEDURAL HISTORY: On December 30, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause from her job with Walmart Associates, Inc. (decision # 140542). The decision was based in part on the Department's finding that "[c]laimant has not responded [sic] the request for additional information." On January 19, 2016, decision # 140542 became final without claimant having filed a request for hearing. On February 19, 2016, claimant filed a late request for hearing on decision # 140542. On February 24, 2016, ALJ Kangas issued Hearing Decision 16-UI-53679, dismissing claimant's hearing request on decision # 140542 subject to her right to renew the request by responding to an appellant questionnaire by March 9, 2016. Claimant did not return a timely response, and, on March 15, 2016, Hearing Decision 16-UI-53679 became final without claimant having filed an application for review of that decision with the Employment Appeals Board (EAB).

On March 3, 2016, the Department served notice of another administrative decision concluding claimant did not actively seek work from February 7, 2016 to February 13, 2016 (decision # 143435). On March 23, 2016, decision # 143435 became final without claimant having filed a request for hearing. On April 22, 2016, claimant filed a late request for hearing on decision # 143435. On April 27, 2016, ALJ Kangas issued Hearing Decision 16-UI-58325, dismissing claimant's hearing request on decision # 143435 subject to her right to renew the request by responding to an appellant questionnaire within 14 days. On May 4, 2016, the Office of Administrative Hearings received claimant's response. On May 9, 2016, ALJ Kangas issued Hearing Decision 16-UI-59192, concluding claimant did not show good cause for filing a late request for hearing on decision # 143435 and re-dismissing claimant's hearing request. On May 16, 2016, claimant filed an application for review of Hearing Decision 16-UI-59192 with the Employment Appeals Board (EAB). EAB has also construed claimant's May 16, 2016 filing as a late application for review of Hearing Decision 16-UI-53679.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-53679 and 16-UI-59192. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0589 and 2016-EAB-0592).

CONCLUSIONS AND REASONS: Claimant's late application for review of Hearing Decision 16-UI-53679 must be dismissed as untimely. We agree with the ALJ's decision in Hearing Decision 16-UI-59192 that claimant's late request for hearing should be dismissed.

With claimant's application for review, claimant submitted a written argument in which she explained the circumstances of her work separation, described filing an unemployment insurance claim, choosing not to claim benefits in January while supporting herself with the proceeds of her 401K, and a medical situation. Claimant stated, "I'm not sure why I am getting denied for cash assistance with unemployment. I am only asking for assistance until I can get a job. I don't understand what I'm not doing correctly to be able to get assistance from unemployment . . . I am trying to comply with everything that you have asked for . . ." We write to answer that question, to explain why claimant has been and is being denied benefits.

Based on information available to EAB, the Department denied claimant benefits for two reasons, each of which we will explain. The first reason the Department denied benefits was based on claimant's work separation from Walmart Associates, Inc. (decision # 140542). The Department decided that claimant quit work without good cause, which Oregon law says is a kind of work separation that disqualifies people from getting unemployment insurance benefit payments. According to the findings in that decision, the Department denied benefits at least in part based on claimant's failure to respond to the Department's request for additional information about her reasons for quitting that job. As a result of that decision, Oregon law states that the Department may not pay benefits to claimant until she has earned four times her weekly benefit amount from work in subject employment.

Once the Department issued that decision, claimant had the right to a hearing so she could dispute the Department's conclusions and provide information about what caused her to quit her job with Walmart, but only if she filed a request for hearing by January 19, 2016. Claimant did not. Instead, she filed a *late* request for hearing one month after the deadline expired, and, when ALJ Kangas gave her the opportunity to provide additional information in order to show good cause for the late filing and regain her right to a hearing about why she quit her job with Walmart, claimant did not respond. Ultimately, ALJ Kangas's decision dismissing claimant's late request for hearing on that issue became final. Although EAB has construed claimant's May 16, 2016 filings as an application for review in that matter, we must dismiss the application for review because it too was filed late, and claimant did not explain why. *See* OAR 471-041-0070 (late applications for review are only allowed if the party filing it shows good cause, files it within a reasonable time, and includes a written explanation explaining why the application for review was late).

The second reason the Department denied claimant benefits was because the Department concluded she did not actively seek work during the week of February 7, 2016 to February 13, 2016 (week 6-16) (decision # 143435). The Department's decision denying claimant benefits for that week explained that, although claimants must do five work-seeking activities each week as a condition of being eligible for benefits, "[c]laimant did not do any work search activities." Because of that conclusion, the Department

determined that it could not pay benefits to claimant for the week of February 7, 2016 to February 13, 2016.

Once the Department issued that decision, claimant had the right to a hearing to try to prove that she did actively seek work during the week of February 7th through February 13th, but only if she filed the request for hearing by March 23, 2016. Claimant did not. Instead, she waited until almost a month after that deadline expired, then filed another *late* request for hearing. This time, however, when ALJ Kangas gave her the opportunity to provide additional information in order to show good cause for the late filing and regain her right to a hearing about whether she actively sought work during the week of February 7th through February 13th, claimant responded. Unfortunately, despite the fact that ALJ Kangas asked claimant to respond to specific questions like "why didn't you [file your hearing request before the deadline," "[w]as there anything you could have done to meet the deadline," and "please explain why [you believe you had "good cause" for filing your hearing request late]," claimant chose not to answer those questions and instead provided a written statement that did not include any information explaining why she did not request a hearing on time. Likewise, although claimant filed a timely application for review with EAB about this decision, and submitted a written statement at the same time, claimant's written statement did not actually include any information explaining why she did not file a timely request for hearing on the decision concluding she had not actively sought work.

The only reason that either of claimant's late requests for hearing on either decision could have been allowed would be if claimant had established that she had good cause for filing each of those requests for hearing a month after the deadline for filing them had expired. *See* ORS 657.269, ORS 657.875, OAR 471-040-0010 (February 10, 2012). Claimant did not do so. Because claimant failed to file timely requests for hearing of decisions # 140542 and 143435, and did not establish good cause for filing her requests for hearing of both decisions one month late, she lost her right to dispute the Department's decision that she quit work at Walmart without good cause, and she lost her right to dispute the Department's decision that she did not actively seek work during the week of February 7th through February 13th. Because of that, those decisions remain in full force and effect. Claimant is not and cannot become eligible for benefits for the week of February 7th through February 13th, so she cannot receive a benefit payment for that week. Because claimant is disqualified from benefits because of her work separation, she may not receive any benefit payments unless and until she ends the disqualification period caused by her work separation and requalifies for benefits by earning four times her weekly benefit amount from work in subject employment. If claimant believes she has already requalified for benefits, or if she has questions about what she must do to requalify for benefits, she must direct her questions to the Department's call center at (877) 345-3484.

For the reasons explained herein, claimant's late application for review of Hearing Decision 16-UI-53679 is dismissed as untimely. With respect to Hearing Decision 16-UI-59192, EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), Hearing Decision 16-UI-59192 is **adopted**.

DECISION: Claimant's application for review of Hearing Decision 16-UI-53679 is dismissed; decision # 140542 remains undisturbed. Hearing Decision 16-UI-59192 is affirmed.

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

DATE of Service: May 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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