

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0700

Late Application for Review Allowed
Reversed & Remanded

PROCEDURAL HISTORY: On July 8, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 201014) concluding that claimant had been overpaid \$142 in unemployment benefits. The administrative decision was mailed to claimant at the following address: 1235 W 3rd Aly, Apt 3, Eugene, Oregon 97401. On July 28, 2014, decision # 201014 became final without a hearing request having been filed. On May 9, 2016, claimant filed an untimely request for hearing; on this hearing request, claimant gave the following as her address of record: 1832 Ferry Alley, Eugene OR 97401. On May 17, 2016, the Office of Administrative Hearings (OAH) issued Hearing Decision 16-UI-59686, dismissing claimant's hearing request as untimely, subject to claimant's right to renew the request by responding to an appellant questionnaire within 14 days. The hearing decision was mailed to claimant at the 1235 W 3rd address. On June 1, 2016, Hearing Decision 16-UI-59686 was returned to the OAH as undeliverable. On June 6, 2016, Hearing Decision 16-UI-59686 became final without an application for review having been filed. On June 14, 2016, claimant filed an untimely application for review with the Employment Appeals Board (EAB). On the application for review, claimant again gave the 1832 Ferry Alley address as her address of record.

LATE APPLICATION FOR REVIEW: OAR 657.270(6) and (7) required that claimant's application for review of Hearing Decision 16-59686 be filed on or before June 6, 2016; claimant filed her application for review on June 14, 2016. Under OAR 471-041-0070(2) (March 20, 2012), the period for filing an application for review may be extended a reasonable time upon a showing of "good cause." "Good cause" exists if an applicant demonstrates that "factors or circumstances beyond the applicant's reasonable control prevented timely filing." OAR 471-041-0070(2)(a). Although claimant provided OAH with her correct and current address of record on her hearing request, OAH mailed Hearing Decision 16-UI-59686 to claimant's former address. OAH's mistake was a circumstance beyond claimant's reasonable control that prevented her from promptly receiving Hearing Decision 16-UI-59686 and timely filing her application for review. The late application for review is therefore allowed.

LATE REQUEST FOR HEARING: ORS 657.269 provides that an individual has 20 days after the date an administrative is mailed to request a hearing. Claimant's hearing request was filed almost two

years from the date on which Hearing Decision 16-UI-59686 was mailed to her and was therefore untimely. ORS 657.875 provides that deadline for filing a hearing request may be extended a reasonable time upon a showing of good cause. OAR 471-040-0010 (February 10, 2012) 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. OAR 471-040-0010(4) provides that an appellant “shall set forth the reason(s) for filing a late hearing request in a written statement, which [OAH] shall consider in determining whether good cause exists for the late filing, and whether the request was filed within a reasonable time.” Because of OAH’s mistake in sending Hearing Decision 16-UI-59686, claimant was denied the right to present her reasons for filing the late hearing request, and to have OAH review and consider these reasons. We therefore reverse Hearing Decision 16-UI-59686 and remand it to OAH for a hearing on the reasons why claimant filed a late hearing request. If the ALJ determines that claimant has shown good cause for her late filing, only then must the ALJ conduct a hearing on the merits of claimant’s hearing request.

DECISION: Hearing Decision 16-UI-59686 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: June 15, 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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