

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0805

Affirmed
Late Requests for Hearing Denied

PROCEDURAL HISTORY: On January 26, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 150525) concluding that claimant was not available for work from December 27, 2015 through January 2, 2016 (week 52-15). On February 3, 2016, the Department served notice of an administrative decision concluding that claimant was ineligible for unemployment benefits because he failed to register for work with the iMatch® system. On February 16, 2016, decision # 150525 became final without a request for hearing having been filed. On February 23, 2016, the iMatch® decision became final without a request for hearing having been filed. On March 17, 2016, claimant filed a late request for hearing on the iMatch® decision. On March 22, 2016, ALJ Kangas issued Hearing Decision 16-UI-55515, 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 of the date on which the decision was mailed. On April 8, 2016, claimant submitted a response to the appellant questionnaire and an application for review to the Employment Appeals Board (EAB). By letter dated April 8, 2016, EAB returned the application for review and response to the appellant questionnaire to the Office of Administrative Hearings (OAH), pending further proceedings regarding the appellant questionnaire. By letter dated April 14, 2016, OAH notified claimant that his response to the appellant questionnaire was untimely and that Hearing Decision 16-UI-55515 remained undisturbed. On June 30, 2016, claimant filed another request for hearing on the iMatch® decision with the Department.

On May 19, 2016, claimant filed an untimely request for hearing on decision # 150525, the availability for work decision. On May 24, 2016, ALJ Kangas issued Hearing Decision 16-UI-55515, dismissing claimant's hearing request subject to claimant's right to renew the request by responding to an appellant questionnaire within 14 days of the date on which the decision was mailed. Claimant timely responded to the appellant questionnaire concerning decision # 150525. On June 21, 2016, ALJ Kangas issued Hearing Decision 16-UI-62187, re-dismissing claimant's request for hearing on decision # 150525. On July 1, 2016, claimant filed an application for review of Hearing 16-UI-62187.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-62187 and 16-UI-55515. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-0784 and 2016-EAB-0805).

Application for Review of the Hearing Decision 16-UI- 55515: An application for review must be filed within 20 days of the date on which the hearing decision was issued. OAR 471-041-0060(2); OAR 657.270(6) and (7). 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).

On April 8, 2016, claimant submitted both an application for review and a response to an appellant questionnaire on his hearing request concerning the iMatch® decision to EAB. EAB returned both the questionnaire and application for review to OAH for further processing. By letter dated April 14, OAH informed claimant that his response to the appellant questionnaire was untimely and that Hearing Decision 16-UI-55515 remained undisturbed. Claimant’s April 8 application for review was never returned to EAB for further processing, however. On June 30, 2016, claimant filed a second request for hearing on the decision with the Department. We construe this June 30 request for hearing as an application for review because it expresses claimant’s “intent to appeal” Hearing Decision 16-UI-55515. *See* OAR 471-041-0060(1) (January 8, 2008) (an application for review need not be filed on any particular form as long as it expresses an “intent to appeal” a specific hearing decision). Although this application for review was filed more than 20 days after Hearing Decision 16-UI-55515 was issued, the record demonstrates that claimant had good cause for doing so. Due to administrative errors, claimant’s April 8 application for review was never acknowledged by EAB. These mistakes constituted circumstances beyond claimant’s reasonable control that prevented him from timely filing his application for review. Claimant’s late application for review of Hearing Decision 16-UI-55515 is therefore allowed.

Review of Hearing Decisions 16-UI-62187 and 16-UI-55515: EAB reviewed the entire hearing records in these cases. On *de novo* review and pursuant to ORS 657.275(2), the hearing decisions under review are **adopted**.

DECISION: Hearing Decisions 16-UI-62187 and 16-55515 are affirmed.

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

DATE of Service: July 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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