

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1069

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On March 15, 2016, the Oregon Employment Department (the Department) served two notices of two administrative decisions, one concluding claimant did not actively seek work from December 20, 2015 to January 9, 2016 (decision # 154659), and the second concluding claimant did not actively seek work from January 17, 2016 to January 30, 2016 (decision # 155642). On April 4, 2016, both decisions became final without claimant having filed a timely request for hearing. On August 16, 2016, claimant filed late requests for hearing by telephone. On August 19, 2016, ALJ Kangas issued Hearing Decisions 16-UI-65937 and 16-UI-65938, dismissing claimant's requests for hearing as untimely, subject to his right to renew the requests by responding to an appellant questionnaire by September 2, 2016. On September 6, 2016, claimant filed timely applications for review of Hearing Decisions 16-UI-65937 and 16-UI-65938 with the Employment Appeals Board (EAB) and submitted late responses to the appellant questionnaires. On September 12, 2016, ALJ Kangas notified claimant that, because the responses were late, the Office of Administrative Hearings (OAH) would not consider them.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions Hearing Decisions 16-UI-65937 and 16-UI-65938. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-1068 and 2016-EAB-1069).

Claimant's appellant questionnaire responses are construed as written argument for purposes of EAB's review of these matters. We construe claimant's submission of the information as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. OAH declined to consider the information claimant presented, suggesting that presenting the information was beyond his control. We therefore admitted the questionnaire into evidence as EAB Exhibit 1, and reviewed and considered it when reaching this decision.¹

¹ 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 at EAB Exhibit 1.

FINDINGS OF FACT: Claimant did not receive notice of decisions # 154659 and 155642 when they were served by the Department. On August 3, 2016, claimant received mail stating that he owed money to the Department. At that time, he went online and learned that he had been denied benefits. Thirteen days later, on August 16, 2016, claimant filed requests for a hearing on decisions # 154659 and 155642.

CONCLUSIONS AND REASONS: Claimant's late requests for hearing should be denied.

ORS 657.269 requires that parties file requests for hearing within 20 days after the date the decisions were mailed. In order to be timely, claimant's requests for hearing in these matters had to be filed no later than April 4, 2016. Claimant filed them on August 16, 2016, making them late. ORS 657.875 allows the filing deadline to be extended, but in every case the deadline may only be extended "a reasonable time." OAR 471-040-0010(3) defines "a reasonable time" as seven days after the circumstances that prevented a timely filing ceased to exist.

In these matters, the circumstance that prevented claimant from filing timely requests for hearing was that he was not aware benefits had been denied. Those circumstances ended on August 3, 2016 when claimant received mail from the Department indicating that he owed money and went online to discover that benefits had been denied. Therefore, claimant had seven days from August 3, 2016 – August 10, 2016 – to file late requests for hearing within the specified 7-day "reasonable time" period. Claimant filed his late requests for hearing in these matters on August 16, 2016, six days after the "reasonable time" period expired. Regardless whether claimant might otherwise have shown "good cause" for the late requests for hearing in these matters, because he did not file within the 7-day "reasonable time" period, his requests must be dismissed.

DECISION: Hearing Decisions 16-UI-65937 and 16-UI-65938 are affirmed.

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

DATE of Service: September 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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