

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1200

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: PROCEDURAL HISTORY: On January 28, 2016, the Oregon Employment Department (Department) served notice of administrative decision #131034, concluding that claimant voluntarily left work without good cause, and administrative decision #112734, concluding, based on decision # 131034, that claimant was overpaid \$3,486 in unemployment benefits. On February 17, 2016, both decisions became final without requests for hearing having been filed. On September 23, 2016, claimant filed late requests for hearing. On September 28, 2016, ALJ Kangas issued Hearing Decision 16-UI-68194, dismissing claimant's late request for hearing on decision # 131034, and Hearing Decision 16-UI-68192, dismissing claimant's late request for hearing on decision # 112734. Both decisions were subject to claimant's right to renew her hearing requests by responding to appellant questionnaires by October 12, 2016. On October 18, 2016, claimant submitted responses to the questionnaires and timely applications for review of Hearing Decision 16-UI-68192 and 16-UI-68194 to the Employment Appeals Board (EAB). EAB forwarded the responses to the questionnaires to the Office of Administrative Hearings (OAH), and by letter dated October 26, 2016, OAH notified claimant that, because responses to the appellant questionnaires were late, OAH would not review their contents.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-68912 and 16-UI-68914. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-1199 and 2016-EAB-1200).

EVIDENTIARY MATTER: Claimant's responses to the appellant questionnaires are construed as written argument for purposes of EAB's review of this matter. We construe claimant's submission of the information in the questionnaires 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's refusal to consider the information claimant presented in her appellant questionnaires was a circumstance beyond claimant's reasonable

control. We therefore admitted claimant's responses to the appellant questionnaires into evidence as EAB Exhibit 1, and reviewed and considered these responses when reaching this decision.¹

FINDINGS OF FACT: (1) In early February 2016, claimant received decisions # 112734 and # 131034, the decisions at issue.

(2) Claimant apparently disagreed with the decisions at issue, but did not file requests for hearing until September 23, 2016 because she is “very bad at paperwork when I don’t think that is fair.” She “ignored the paperwork out of frustration” because she deals with depression. Claimant filed her hearing requests because her wages were being garnished to repay the unemployment benefits she had been overpaid. EAB Exhibit 1.

CONCLUSION AND REASONS: Claimant failed to demonstrate good cause for failing to file timely hearing requests.

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 on the decisions at issue had to be filed no later than February 17, 2016. Claimant filed her hearing requests on September 23, 2016, making them more than 8 months late. ORS 657.875 allows the filing deadline to be extended a "reasonable time" upon a showing of "good cause." OAR 471-040-0010(1) (February 10, 2012) defines "good cause" as factors or circumstances beyond an individual's reasonable control or an excusable mistake. OAR 471-040-0010(3) defines "a reasonable time" as seven days after the circumstances that prevented a timely filing ceased to exist.

Claimant did not timely file her requests for hearing because she thought the decisions she had received were unfair. Claimant admitted, however, that her reaction to the decisions was “stupid.” EAB Exhibit 1. She also asserted that she ignored the decisions out of frustration and deals with depression. Claimant failed to demonstrate that any circumstances, including the state of her mental health, directly prevented her from realizing it was unwise to take no action on the decisions at issue when she received them. In other words, claimant did not show why she now realizes it was “stupid” to ignore the decisions at issue but did not realize it was “stupid” to do so in February 2016. Claimant has therefore failed to demonstrate any circumstances beyond her reasonable control (or excusable mistake) prevented her from timely filing hearing requests on the decisions she received in February 2016. Claimant’s late requests for hearing are dismissed.

DECISION: Hearing Decisions 16-UI-68192 and 16-UI-68194 are affirmed.

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

DATE of Service: November 21, 2016

¹ Any party that objects to admission of EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, EAB Exhibit 1 will remain in the record.

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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