

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1284

Affirmed
Late Requests to Reopen Denied

PROCEDURAL HISTORY: On April 12, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant underreported earnings and therefore was overpaid \$393 in benefits that he is liable to repay (decision # 202325). On May 2, 2016, the Department served notice of an administrative decision concluding that claimant was liable to have \$968 deducted from any future benefits payable to him. Claimant filed timely requests for hearing on both decisions. On May 19 and 24, 2016, the Office of Administrative Hearings (OAH) served notices of hearings scheduled for June 2, 2016. On June 2, 2016, claimant failed to appear at the hearings, and ALJ Holmes-Swanson issued Hearing Decisions 16-UI-60899 and 16-UI-60894, dismissing claimant's requests for hearing for his failure to appear. On June 16, 2016, claimant filed timely requests to reopen the hearings. On July 1, 2016, OAH served notices of hearings scheduled for July 22, 2016. On July 22, 2016, claimant failed to appear at the hearings, and on July 26, 2016, ALJ Shoemake issued Hearing Decisions 16-UI-64441 and 16-UI-64440, dismissing claimant's requests for reopening for his failure to appear. On August 15, 2016, Hearing Decisions 16-UI-64441 and 16-UI-64440 became final without claimant having filed requests to reopen the July 22, 2016 hearings. On November 3, 2016, claimant filed late requests for reopening. On November 9, 2016, ALJ Kangas issued Hearing Decisions 16-UI-70866 and 16-UI-70873, denying claimant's requests as untimely without a showing of good cause. On November 15, 2016, claimant filed applications for review of Hearing Decisions 16-UI-70866 and 16-UI-70873 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-70866 and 16-UI-70873. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2016-EAB-1284 and 2016-EAB-1285).

FINDINGS OF FACT: In his November 3, 2016 requests for reopening, claimant explained that he missed the hearings "back in June 2 and May 2016" because he had "conflicting job obligations that were unavoidable." Exhibit 9. Claimant also stated that he currently is "out of town visiting family down south, indefinitely, and can't receive regular postal mail." *Id.* Claimant did not explain why he

did not file his request for reopening within 20 days after ALJ Shoemake issued Hearing Decisions 16-UI-64441 and 16-UI-64440.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant's requests for reopening were untimely without a showing of good cause. Claimant's requests therefore are denied.

ORS 657.270(5) permits parties who failed to appear at a hearing to request to reopen the hearing, and permits the ALJ to do so if, among other things, the party files the request within 20 days of the date of the hearing decision dismissing the hearing request for failure to appear. ORS 657.875 allows the time period for filing the request to be extended "a reasonable time" upon a showing of "good cause" for the late filing. "Good cause" means an excusable mistake or factors beyond the party's reasonable control; "a reasonable time" is seven days after those circumstances ceased to exist. OAR 471-040-0041 (February 10, 2012).

Here, claimant filed his requests for reopening over 14 weeks after ALJ Shoemake issued Hearing Decisions 16-UI-64441 and 16-UI-64440. His explanation for missing the hearings "back in June 2 and May 2016," and statement regarding his current inability to receive mail, do not explain why he did not file his requests for reopening within 20 days after Hearing Decisions 16-UI-64441 and 16-UI-64440 were issued in July 2016. We therefore deny claimant's requests for reopening as untimely without a showing of good cause.

DECISION: Hearing Decisions 16-UI-70866 and 16-UI-70873 are affirmed.

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

DATE of Service: November 18, 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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