

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0011

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On August 18, 2016, the Oregon Employment Department (the Department) served notice of the following administrative decisions: decision # 131356 concluded claimant did not actively search for work from December 7, 2014 through January 3, 2015; decision # 122649 concluded claimant did not actively search for work from January 4 through March 21, 2015; decision # 134658 concluded that claimant did not actively search for work from November 22 through November 28, 2015; and decision # 135709 concluded that claimant did not actively search for work from January 3 through February 13, 2016. On September 7, 2016, these four decisions became final without requests for hearing having been filed. On August 19, 2016, the Department served notice of decision # 193430 which assessed a \$5,737 overpayment, a \$1,721 monetary penalty, and 52 penalty weeks, based on the August 18 decisions. On September 8, 2016, decision # 193430 became final without a request for hearing having been filed.

On September 16, 2016, claimant filed late requests for hearing on the administrative decisions. On September 27, 2016, ALJ Kangas issued the following hearing decisions: Hearing Decision 16-UI-68139, which dismissed claimant's hearing request on decision # 193430 as untimely; Hearing Decision 16-UI-68140, which dismissed claimant's hearing request on decision # 131356 as untimely; Hearing Decision 16-UI-68141, which dismissed claimant's hearing request on decision # 135709 as untimely; Hearing Decision 16-UI-68142, which dismissed claimant's hearing request on decision # 122649 as untimely; and Hearing Decision 16-UI-68186, which dismissed claimant's hearing request on decision # 134658 as untimely. All five decisions were subject to claimant's right to renew the requests by responding to appellant questionnaires within 14 days.

Claimant timely responded to the appellant questionnaires. On October 25, 2016, the Office of Administrative Hearings issued notice of two hearings scheduled for December 2, 2016. Claimant failed to appear at the 9:30 a.m. consolidated hearing on decisions # 131356, 135709, 122649, and 134658, and on December 2, 2016, ALJ Shoemake issued Hearing Decisions 16-UI-72146, 16-UI-72147, 16-UI-72148, 16-UI-72149, dismissing those four hearing requests for failure to appear. Claimant appeared at the 10:45 a.m. hearing on decision # 193340, and on December 9, 2016, the ALJ issued Hearing Decision 16-UI-72621, dismissing claimant's hearing request as untimely.

On December 22, 2016, Hearing Decisions 16-UI-72146, 16-UI-72147, 16-UI-72148, 16-UI-72149 became final without applications for review having been filed. On December 29, 2016, Hearing Decision 16-UI-72621 became final without an application for review having been filed. On December 30, 2016, claimant filed untimely applications for review of all five decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-72146, 16-UI-72147, 16-UI-72148, 16-UI-72149, and 16-UI-72621. For case-tracking purposes, this decision is being issued in quintuplicate (EAB Decisions 2017-EAB-0007, 2017-EAB-0008, 2017-EAB-0009, 2017-EAB-0010 and 2017-EAB-0011).

CONCLUSION AND REASONS: Claimant's late applications for review are dismissed.

ORS 657.270(6) required that claimant's applications for review of Hearing Decisions 16-UI-72146, 16-UI-72147, 16-UI-72148, and 16-UI-72149 be filed on or before December 22, 2016, and that her application for review of Hearing Decision 16-UI-72621 be filed on or before December 29, 2016. Because claimant filed her applications for review on December 30, 2016, they were late.¹ OAR 471-041-0070 (August 30, 2011) provides that the filing period may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875. "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-041-0070(2)(a). "A reasonable time" is seven days after the circumstances that prevented timely filing ceased to exist. OAR 471-041-0070(2)(b). With a late application for review, an applicant must provide a written statement regarding the circumstances that prevented a timely filing. OAR 471-041-0070(3).

Although claimant provided a statement with her applications for review, she discussed only the reasons why she disagreed with the administrative decisions at issue. She failed to address any circumstances she faced that prevented her from timely filing her applications for review. Because claimant failed to demonstrate good cause for extending the deadline for filing her applications for review, they are dismissed.

DECISION: The applications for review filed December 30, 2016 are dismissed. Hearing Decisions 16-UI-72146, 16-UI-72147, 16-UI-72148, 16-UI-72149 and 16-UI-72621 remain undisturbed.

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

DATE of Service: January 9, 2017

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

¹ The filing date of applications for review filed by mail is the postmark date affixed to the envelope by the US Postal Service. OAR 471-041-0065(1)(b). The postmark date on the envelope in which claimant mailed her applications for review to EAB was December 30, 2016.

'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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