

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0276

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On December 17, 2016, the Oregon Employment Department (the Department) served notice of the following three administrative decision: decision # 95258 concluded that claimant did not actively search for work from November 13 through 19, 2016 (week 46-16); decision # 101450 concluded that claimant was not available for work from November 27 through December 3, 2016 (week48-16); and decision # 102915 concluded that claimant was not available for work from November 13 through 19, 2016. On January 6, 2017, these three decisions became final without requests for hearing having been filed. On January 18, 2017, claimant filed late requests for hearing. On January 23, 2017, ALJ Kangas issued the following three hearing decisions: Hearing Decision 17-UI-75231 dismissed claimant's hearing request on decision # 95258 as untimely; Hearing Decision 17-UI-75223 dismissed claimant's hearing request on decision # 102915 as untimely; and Hearing Decision 17-UI-75229 dismissed claimant's hearing request on decision # 101450 as untimely. All three hearing decisions were subject to claimant's right to renew her hearing requests by responding to an appellant questionnaire within 14 days. On February 13, 2017, the three hearing decisions became final without applications for review having been filed with the Employment Appeals Board (EAB). On February 14, 2017, claimant filed untimely applications for review with EAB.¹

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions. UI-75231, 17-UI-75223 and 17-UI-75229. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2017-EAB-0274, 2017-EAB-0275, and 2017-EAB-0276).

CONCLUSIONS AND REASONS: Claimant's late applications for review of Hearing Decisions 17-UI-75231, 17-UI-75223 and 17-UI-75229 are dismissed.

Hearing Decisions 17-UI-75231, 17-UI-75223 and 17-UI-75229 were issued on January 23, 2017. ORS

¹ Also on February 14, 2017, claimant filed her responses to the appellant questionnaires to the Office of Administrative Hearings (OAH). By letters dated February 22, 2017, the Office of Administrative Hearings informed claimant that her responses to the appellant questionnaires were untimely and would not be considered.

657.270(6) required claimant's applications for review to be filed no later than February 13, 2017. The filing date of an application for review that is mailed is the U.S. Postal Service postmark date on the envelope in which the application for review is mailed. OAR 471-041-0065(1)(b) (October 29, 2006). Because claimant's applications for review were sent in an envelope postmarked February 14, 2017, they were late. OAR 471-041-0070 (August 30, 2011) states 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 her application for review, claimant included her responses to the appellant questionnaire she submitted to the Office of Administrative Hearings. In her responses to the appellant questionnaires, claimant stated that she did not receive the administrative decisions at issue until January 16, 2017. Claimant also provided information showing that on December 9, 2016, her home was damaged by severe weather conditions. Claimant asserted that due to the damage to her home, she and her family had to "temporarily relocate for approximately three weeks. Preventing access to mailbox." Although claimant explained why she was unable to timely file her hearing requests, she provided no argument or information that would explain her failure to timely file her applications for review. Claimant therefore failed to demonstrate good cause to extend the period for filing her applications for review and they are dismissed.

DECISION: The applications for review filed February 14, 2017 are dismissed. Hearing Decisions 17-UI-75231, 17-UI-75223 and 17-UI-75229 remain undisturbed.

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

DATE of Service: March 6, 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 '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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