

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0305

Reversed
Late Request for Hearing Allowed

PROCEDURAL HISTORY: On December 29, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 155336). On January 18, 2017, decision # 155336 became final without claimant having filed a request for hearing. On January 30, 2017, claimant filed a late request for hearing. On February 2, 2017, ALJ Kangas issue Hearing Decision 17-UI-76046, dismissing claimant's request for hearing subject to her right to renew the request by responding to an appellant questionnaire by February 16, 2017. On February 8, 2017, claimant filed a timely response to the appellant questionnaire. The Office of Administrative Hearings (OAH) considered claimant's response, on February 9, 2017 cancelled Hearing Decision 17-UI-76046, and on February 22, 2017 scheduled a hearing for March 7, 2017. On March 7, 2017 ALJ Meerdink conducted a hearing and issued Hearing Decision 17-UI-78351, re-dismissing claimant's request for hearing as untimely without good cause. On March 13, 2017, claimant filed a timely application for review of Hearing Decision 17-UI-78351 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On July 18, 2016, claimant filed an initial claim for benefits. She claimed and was denied benefits for the weeks July 17 through 30, 2016 (weeks 29-16 and 30-16). She did not claim benefits for the weeks from July 31 through December 3, 2016 (weeks 31-16 through 48-16). On December 15, 2016, claimant reopened her claim, and claimed and was denied benefits for the week of December 4 through 10, 2016 (week 49-16). She did not claim benefits for the weeks from December 11, 2016 through January 21, 2017 (weeks 50-16 through 03-17).¹

(2) In late December 2016, claimant began the process of moving and separating from her spouse due to domestic violence. Claimant arranged for her mother to receive her mail during that process, and relied

¹ We take notice of these facts, which are contained in Employment Department records. 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 facts will remain in the record.

on her mother to give her mail to her in a timely manner. On December 29, 2016, claimant instructed the Department to mail all correspondence to her mother's address. The Department did not inform claimant that an administrative decision, or any document to which claimant had a limited time to respond, was forthcoming. Later that day, the Department mailed notice of decision # 155336 to claimant's mother's address.

(3) As of January 30, 2017, claimant's mother had not given claimant the December 29, 2016 notice of decision # 155336, and claimant therefore was unaware of the decision. On January 30, 2017, claimant contacted the Department, was informed of decision # 155336, and immediately requested a hearing. On January 31, 2017, claimant filed an additional claim for benefits and claimed benefits for the week of January 22 through 28, 2017 (week 04-17).²

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant had good cause for filing a late request for hearing on decision # 155336, and filed her request for hearing within a reasonable time. Claimant therefore is entitled to a hearing on the merits of decision # 155336.

Under ORS 657.269, claimant's request for hearing on decision # 155336 needed to be filed by January 18, 2017. It was filed on January 30, 2017, and therefore was late. However, ORS 657.875 provides that the time period for requesting a hearing may be extended "a reasonable time" upon a showing of "good cause." "Good cause" is "when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control." OAR 471-040-0010(1) (February 10, 2012). A "reasonable time" is "seven days after the circumstances that prevented a timely filing ceased to exist." OAR 471-040-0010(3).

In Hearing Decision 17-UI-78351, the ALJ concluded that claimant failed to establish good cause for filing a late request for hearing because the record failed to show claimant's mother did not receive the December 29, 2016 notice of decision # 155336 in the mail, and it was within claimant's reasonable control to check her mother's mail herself, or to have chosen another address to have her mail delivered that she could have controlled.³ We agree with that analysis. However, the ALJ did not address whether claimant's decision to arrange for her mother to receive her mail and rely on her mother to give it to her in a timely manner was an excusable mistake. We find that it was, given that claimant was in the process of moving and separating from her spouse due to domestic violence, was not claiming benefits, was not informed by the Department that an administrative decision or any document to which she had a limited time to respond was forthcoming, and had no discernable reason to doubt her mother's reliability. We therefore conclude that claimant established good cause for filing a late request for hearing on decision # 155336.

We also conclude that claimant filed her request for hearing on decision # 155336 within a reasonable time given that she filed it the same day she was informed of the decision. Claimant's request for hearing therefore is allowed, and she is entitled to a hearing on the merits of decision # 155336.

² We take notice of this fact, which is contained in Employment Department records. 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.

³ Hearing Decision 17-UI-78351 at 3.

DECISION: Hearing Decision 17-UI-78351 is set aside, as outlined above.

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

DATE of Service: March 16, 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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