

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0344

Reversed & Remanded

PROCEDURAL HISTORY: On December 23, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not eligible for benefits from November 27, 2016 to December 3, 2016, and thereafter, because he failed to participate in a Reemployment and Eligibility Assessment (REA) (hereinafter, the REA decision). On January 12, 2017, the REA decision became final without claimant having filed a timely request for hearing. On February 2, 2017, claimant filed a late request for hearing. On February 7, 2017, ALJ Kangas issued Hearing Decision 17-UI-76380, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by February 21, 2017. On February 27, 2017, Hearing Decision 17-UI-76380 became final without claimant having either timely responded to the questionnaire or filed a timely application for review with the Employment Appeals Board (EAB). On March 21, 2017, claimant filed a late application for review with EAB.

CONCLUSIONS AND REASONS: Claimant's late application for review of Hearing Decision 17-UI-76380 is allowed. Hearing Decision 17-UI-76380 is reversed, and this matter remanded to the Office of Administrative Hearings (OAH) for a hearing on whether to allow claimant's late request for hearing on the REA decision and, if necessary the merits of the REA decision.

Late Application for Review. ORS 657.270(6) required that claimant's application for review of Hearing Decision 17-UI-76380 be filed no later than February 27, 2017. It was filed on March 21, 2017, and therefore was late. 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 those circumstances ceased to exist. OAR 471-041-0070(2)(b).

In written argument, claimant asserted that he did not file his application for review by February 27, 2017 because he did not receive the February 7, 2017 decision in the mail. Claimant further established that he filed his application for review after first learning that Hearing Decision 17-UI-76380 had been mailed to him, having it re-mailed to him, and receiving it in the mail on March 20th. Claimant's assertions are supported by a copy of Hearing Decision 17-UI-76380 submitted with his application for

review, stamped with the following statement: “REMAILED FOR OUR INFORMATION ONLY[.] ORIGINAL DATE OF MAILING CONSTITUTES DATE OF SERVICE”. Claimant’s evidence is sufficient to show that he failed to file a timely application for review because he did not receive the February 7, 2017 decision in the mail, which likely was beyond his reasonable control. He also showed that he filed his application for review one day after receiving a copy of that decision, which was a reasonable time. Claimant’s application for review is allowed.

Late Request for Hearing. ORS 657.269 required claimant’s request for hearing on the REA decision to be filed by January 12, 2017. It was filed on February 2, 2017, and therefore was late. Under ORS 657.875, however, 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 his application for review, claimant asked EAB to consider his response to the appellant questionnaire regarding his late request for hearing on the REA decision. Claimant’s request is construed as a request for consideration of information not received into the hearing record under OAR 471-041-0090(2) (October 29, 2006), which allows new, relevant and material information to be considered if the party offering the information establishes that factors or circumstances beyond the party’s reasonable control prevented the party from offering the information into the hearing record. In his response, claimant asserted that he did not file his request for hearing by January 12, 2017 because he did not receive notice of the REA decision in the mail and was misinformed about the process when he called. It is somewhat unclear whether claimant’s assertions pertain to his late request for hearing, late response to the questionnaire or both. Regardless, the information provided suggests that claimant has information relevant and material to whether he had good cause for failing to file a timely request for hearing, and filed his request within a reasonable time. As noted above, claimant’s failure to receive the February 7, 2017 notice of Hearing Decision 17-UI-76380, and therefore the appellant questionnaire, in the mail was beyond his reasonable control, and prevented him from offering his information into the hearing record. Claimant’s request for consideration of his new information therefore is granted. Hearing Decision 17-UI-76380 therefore is reversed, and this matter remanded to OAH for a hearing on whether to allow claimant’s late request for hearing on the REA decision and, if so, the merits of the REA decision.

DECISION: Hearing Decision 17-UI-76380 is set aside, and this matter remanded for further proceedings consistent with this order.¹

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

DATE of Service: March 23, 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

¹ **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 17-UI-76380 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

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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