

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0351

Reversed
Late Request for Hearing Allowed

PROCEDURAL HISTORY: On December 22, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 102856) concluding that claimant was not available for work from October 30 through November 26, 2016 (weeks 44-16 through 47-16). On January 11, 2016, decision # 102856 became final without a request for hearing having been filed. On January 13, 2017 claimant filed a late request for hearing. On January 18, 2017, ALJ Kangas issued Hearing Decision 17-UI-74870, dismissing claimant's late hearing request, subject to claimant's right to renew the request by timely responding to an appellant questionnaire. Claimant timely responded to the appellant questionnaire. By letter dated February 2, 2017, the Office of Administrative Hearings cancelled Hearing Decision 17-UI-74870. On March 2, 2017, ALJ Meerdink conducted a hearing and issued Hearing Decision 17-UI-78039, dismissing claimant's late hearing request. On March 22, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On October 30, 2016, claimant filed an initial claim for unemployment benefits. Claimant claimed benefits for weeks 44-16 through 46-16 (October 30 through November 26, 2016), but was denied benefits for each of the weeks claimed. Claimant stopped claiming benefits after she filed her claim for week 46-16. Claimant continued to check the status of her claims online, however.

(2) On or about December 18, 2016, claimant put a hold on delivery of mail to her home because her mail had been tampered with. The local post office kept claimant's mail, and she was able to pick it up there. Because her work hours conflicted with the hours the post office was open, claimant infrequently picked up her mail. She picked up her mail on or about December 21, 2016 and again on January 12, 2017. She first learned about decision # 102856 when she found it in the mail she picked up on January 12.

CONCLUSION AND REASONS: We disagree with the ALJ and conclude that claimant demonstrated good cause for filing an untimely request for hearing on decision # 102856.

ORS 657.269(2) requires that requests for hearing on administrative decisions be filed within 20 days after it was mailed. The deadline to request a hearing on decision # 102856 was January 11, 2017; because claimant filed her request on January 13, 2017, it was late. ORS 657.875 allows the filing deadline to be extended a “reasonable time” upon a showing of “good cause,” however. OAR 471-040-0010(1) defines “good cause” as “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(3) defines a “reasonable time” as seven days after the circumstances that prevented a timely filing ceased to exist.

The ALJ found that claimant did not demonstrate good cause for her late hearing request because of her failure to check her mail during the three week period from December 21, 2016 to January 12, 2017. According to the ALJ, it was within claimant’s reasonable control to check her mail; had she done so, she would have discovered the administrative decision before the deadline for requesting a hearing had passed. Hearing Decision 17-UI-74870 at 3. We disagree with the ALJ’s analysis.

On December 22, 2016, the date on which the Department mailed decision # 102856 to claimant, claimant was no longer claiming benefits and had not done so for about a month. Although claimant continued to check the status of her claims online, probably because they had been denied, she had no reason to expect that she would receive any correspondence from the Department, and may well have thought that all information about her claims would be provided to her online. Under these circumstances, a reasonable person would not think it necessary to regularly check her mail for a letter from the Department. Because claimant had no reason to think she would receive mail from the Department after she stopped claiming benefits, filing a timely hearing request was a circumstance beyond her reasonable control. She therefore demonstrated good cause to extend the filing deadline to request a hearing on decision # 102856.

We also conclude that claimant filed her hearing request within a reasonable time, given that she filed it a day after she learned about the decision. Claimant’s request for hearing is therefore allowed, and she is entitled to a hearing on the merits of decision # 102856.

DECISION: Hearing Decision 17-UI-78039 is set aside, as outlined above.

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

DATE of Service: March 24, 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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