

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0354

Late Applications for Review Dismissed

PROCEDURAL HISTORY: On March 9, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 123421) concluding that claimant was not available for work from December 20, 2015 until January 15, 2016. On March 29, 2016, decision # 123421 became final without a request for hearing having been filed. On April 11, 2016, the Department served notice of an administrative decision (decision # 111840) that assessed a \$1,701 overpayment, based on decision # 123421. On April 25, 2016, claimant filed untimely hearing requests on both decisions. Claimant failed to appear at hearings scheduled for May 23, 2016. On that date, ALJ Kangas issued the following two decisions dismissing claimant's hearing requests for failure to appear: Hearing Decision 16-UI-60137 dismissed claimant's request for hearing on decision # 123421, and Hearing Decision 16-UI-60147 dismissed claimant's request for hearing on decision # 11840. On June 13, 2016, both decisions became final without requests to reopen the hearings or applications for review having been filed with the Employment Appeals Board (EAB). On September 28, 2016, claimant filed untimely requests to reopen. On October 5, 2016, ALJ Kangas issued the following two decisions dismissing claimant's requests to reopen as untimely: Hearing Decision 16-UI-68639 dismissed claimant's request to reopen the hearing on decision # 123421, and Hearing Decision 16-UI-68637 dismissed claimant's request to reopen the hearing on decision # 111840. Both hearing decisions became final on October 25, 2016, without applications for review having been filed with EAB. On March 21, 2017, claimant filed untimely applications for review with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-68637 and 16-UI-68639. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0354 and 2017-EAB-0355).

CONCLUSIONS AND REASONS: CONCLUSIONS AND REASONS: Claimant's late applications for review of Hearing Decisions 16-UI-68637 and 16-UI-63639 are dismissed.

Hearing Decisions 16-UI-68637 and 16-UI-68639 were issued on October 5, 2016. ORS 657.270(6) required claimant's applications for review to be filed no later than October 25, 2016. Because claimant's applications for review were filed on March 21, 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 his application for review, claimant included a written argument in which he explained that he "was not able to make the hearing date. My father suffered a stroke." Although claimant apparently has provided an explanation why he missed the May 23, 2016 hearing on these matters, he has provided no reason why his applications for review of the decisions dismissing his requests to reopen the hearings were filed five months after those decisions were issued. Claimant has therefore failed to demonstrate good cause for his untimely applications for review and they must be dismissed.

DECISION: The applications for review filed March 21, 2017 are dismissed. Hearing Decisions 16-UI-68637 and 16-UI-68639 remain undisturbed.

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

DATE of Service: March 27, 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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