

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0399

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On January 11, 2012, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant failed to actively search for work from July 31, 2011 through December 31, 2011 (decision # 171835). On January 31, 2012, decision # 171835 became final without a request for hearing having been filed. On March 21, 2012, the Department served notice of an administrative decision concluding that, based on decision # 171835, claimant was overpaid benefits in the amount of \$8,928. On April 10, 2012, the overpayment decision became final without a request for hearing having been filed. On March 2, 2017, claimant filed late hearing requests on decision # 171835 and the overpayment decision. On March 9, 2017, ALJ Kangas issued Hearing Decision 17-UI-78577, which dismissed claimant's request for hearing on decision # 171835, and Hearing Decision 17-UI-78521, which dismissed claimant's request for hearing on the overpayment decision. Both hearing decisions were subject to claimant's right to renew the hearing requests by responding to an appellant questionnaire within 14 days. On March 24, 2017, claimant submitted her response to the appellant questionnaire and filed applications for review with the Employment Appeals Board (EAB). By letter dated April 3, 2017, the Office of Administrative Hearing (OAH) informed claimant that because her response to the appellant questionnaires were late, they would not be considered and Hearing Decisions 17-UI-78577 and 17-UI-78521 remained undisturbed.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-78521 and 17-UI-78577. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0398 and 2017-EAB-0399).

EVIDENTIARY MATTER: With her applications for review, claimant submitted her response to the appellant questionnaires, information which was not part of the record. OAR 471-041-0090(2) (October 29, 2006) allows EAB to consider new information if the party offering the information shows that circumstances beyond the party's reasonable control prevented the party from offering the information at a hearing. OAH's refusal to consider claimant's responses to the appellant questionnaires was a circumstance beyond claimant's reasonable control. Claimant's request to present new information is therefore allowed. Claimant's response to the appellant questionnaires has been marked as EAB

Exhibit 1. A copy of EAB Exhibit 1 is included with this decision. Any party that objects to the admission of EAB Exhibit 1 must submit its objections to this office in writing, setting forth the basis of the objection, within ten days of the date on which these decisions are mailed. Unless such an objection is received, EAB Exhibit 1 will remain part of the record in both cases.

FINDINGS OF FACT: (1) Claimant received decision # 171835 and the overpayment decision sometime after they were mailed.

(2) Claimant did not timely file her hearing requests because she was in a “domestic abusive situation,” did not believe she had any rights, and was looking for work. In addition, a Department representative “made it sound as I had no hope of a hearing.” EAB Exhibit 1.

(3) Claimant was filed her hearing requests on March 2, 2017 because she had been working to “fix other old issues and was advised to ask about a hearing.” EAB Exhibit 1.

CONCLUSION AND REASONS: Claimant’s late requests for hearing are dismissed as untimely.

ORS 657.269 provides that an administrative decision becomes final unless a party requests a hearing within 20 days of the date it was issued. Under ORS 657.875 the deadline for filing a request for hearing may be extended “a reasonable time” upon a showing of “good cause,” which 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).

Here, claimant filed her hearing requests five years after the decisions she is appealing were issued. Claimant asserted that her failure to timely file her hearings occurred because she was a victim of domestic abuse, was looking for work, and believed that she had no rights. In addition, she contended that and because a Department representative discouraged her from requesting hearings. She provided no specific explanation why the circumstances she mentioned – domestic abuse and her work search – prevented her from filing timely hearing requests, and provided no details about the supposedly discouraging advice she received from a Department representative. Without this information, we have no basis for concluding that claimant’s five year delay in filing her hearing requests resulted from circumstances beyond her reasonable control or an excusable mistake, much less that the filing occurred within the seven-day “reasonable time” period after the circumstances or mistake ceased to exist. Claimant therefore failed to show good cause for filing her untimely hearing requests.

DECISION: Hearing Decisions 17-UI-78521 and 17-UI-78577 are affirmed.

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

DATE of Service: April 13, 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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