

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0502-R

Request for Reconsideration Dismissed

PROCEDURAL HISTORY: On December 23, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 105537). On January 12, 2017, decision # 105537 became final without claimant having requested a hearing. On February 14, 2017, claimant filed a late request for hearing. On February 21, 2017, ALJ Kangas issued Hearing Decision 17-UI-77378, dismissing claimant's request for hearing subject to her right to renew her request by filing a response to an appellant questionnaire by March 7, 2017. Claimant filed a timely response to the appellant questionnaire. ALJ Kangas considered claimant's response, and on March 16, 2017 issued Hearing Decision 17-UI-79079, re-dismissing claimant's request for hearing as untimely without good cause. On April 5, 2017, Hearing decision 17-UI-79079 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On May 1, 2017, claimant filed a late application for review with EAB that contained no explanation for the late filing. On May 4, 2017, EAB issued EAB Decision 2017-EAB-0502, dismissing claimant's application for review as untimely without a showing of good cause to extend the filing deadline to May 1, 2017. On May 10, 2017, claimant filed a timely request for reconsideration that contained an explanation for her failure to file a timely application for review of Hearing decision 17-UI-79079.

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is dismissed. EAB Decision 2017-EAB-0502 and Hearing Decision 17-UI-79079 remain undisturbed.

ORS 657.290 provides, in relevant part, that EAB, upon application of any interested party, may in its discretion reconsider any previous EAB decision, and that such reconsideration may include the making of a new decision to the extent necessary and appropriate for the correction of previous error of fact or law. OAR 471-041-0145 (October 29, 2006) states, in relevant part, that any party may request reconsideration to correct an error of material fact or law, but that the request is subject to dismissal unless it includes a statement that a copy has been provided to the other parties. Here, claimant's request for reconsideration does not include a statement that a copy has been provided to the employer, Wildhorse Resort and Casino. Claimant's request therefore is dismissed under OAR 471-041-0145(2)(a).

Even if we had allowed claimant's request for reconsideration, we would have adhered to EAB Decision 2017-EAB-0502. EAB Decision 2017-UI-0502 correctly states:

An application for review is timely if it is filed within 20 days of the date that OAH mailed the decision for which review is sought. OAR 471-041-0070(1) (March 20, 2014). The 20 day filing period may be extended a "reasonable time" upon a showing of "good cause." ORS 657.875; OAR 471-041-0070(2). "Good cause" means that factors or circumstances beyond the applicant's reasonable control prevented timely filing OAR 471-040-0070(2)(a). A "reasonable time" is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0050(2)(b).¹

OAR 471-041-0070(3) specifically requires the applicant to include with the application for review a written statement describing the circumstances that prevented a timely filing. As claimant acknowledges in her request for reconsideration, EAB Decision 2017-EAB-0502 correctly states that claimant included with her application for review new information regarding her failure to file a timely request for hearing on decision # 105537, but no information regarding her failure to file a timely application for review of Hearing Decision 17-UI-79079.² EAB Decision 2017-EAB-0502 therefore correctly concluded that claimant failed to establish that she filed her application for review late with good cause and within a reasonable time. Claimant therefore has failed to show that EAB Decision 2017-EAB-0502 contained a material error of fact or law.

Finally, even if we considered claimant's explanation, in her request for reconsideration, for filing a late application for review of Hearing Decision 17-UI-79079, we still would conclude that she failed to establish good cause to extend the filing deadline to May 1, 2017. Claimant asserted in her request for reconsideration that:

In March my grandfather, the man who raised me, became hospitalized in New Mexico. Efforts being made to go see him kept me busy until he passed in the last week of March. With his passing I stopped claiming unemployment and was barely able to afford a way to New Mexico for the funeral. In that time I was informed that the job position at my old workplace that I had been contemplating the last time I had an opportunity to file an appeal, was reposted. I could not file the late appeal in confidence that my old employer would not take it personally. So, when I returned home from New Mexico my efforts once again shifted to trying to gain a job with a steady pay, which would be considered a promotion from my last position in the same department. I was granted an interview on April 20th, but not chosen, and so I submitted the first written argument faxed to your office on 5-1-17.³

However, we infer from claimant's explanation that she returned from New Mexico in late March or early April, and therefore delayed filing her application for review for several weeks while she applied and interviewed for a position with the employer, until she was not hired for the position. Thus, although claimant chose not to file an application for review of Hearing Decision 17-UI-79079 when she

¹ EAB Decision 2017-UI-0502 at 1.

² *Id.* Claimant's Request for Reconsideration at 1.

³ Claimant's Request for Reconsideration at 1.

returned from New Mexico in late March or early April, it nevertheless was within her reasonable control to do so. Claimant's explanation therefore fails to establish good cause to extend the filing period to May 1, 2017.

DECISION: The request for reconsideration filed May 10, 2017 is dismissed. EAB Decision 2017-EAB-0502 and Hearing Decision 17-UI-79079 remain undisturbed.

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

DATE of Service: May 17, 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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