

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0509

Late Applications for Review Allowed
Solicitudes de Revisión Tardías Permitidas

Late Requests to Reopen Dismissed
Peticiones Tardías de Reabrir Despedidas

PROCEDURAL HISTORY: On December 16, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 152725). On January 5, 2016, decision # 152725 became final without claimant having filed a timely request for hearing. On January 22, 2016, the Department served notice a second administrative decision assessing a \$1,022 overpayment, a \$204.40 monetary penalty and 12 penalty weeks (Decision # 195957) based on decision #152752.

On March 7, 2016, claimant filed late requests for hearing regarding decisions # 152725 and 195957. On March 9, 2016, ALJ Kangas issued Order Nos. 16-UI-54719 and 16-UI-54721, dismissing claimant's late requests for hearing subject to claimant's right to renew the requests by responding to an appellant questionnaire by March 23, 2017. On March 11, 2016, claimant responded to the questionnaire with new information. On March 31, 2017, the Office of Administrative Hearings (OAH) mailed separate letters canceling Order Nos. 16-UI-54719 and 16-UI-54721. On April 1, 2016, OAH mailed notices of separate hearings regarding decision #s 152725 and 195957 both scheduled for April 14, 2016. On April 14, 2016, ALJ Frank conducted separate hearings, at which claimant failed to appear, and issued Hearing Decisions 16-UI-572681 and 16-UI-57306, re-dismissing claimant's late requests for hearing. The hearing decisions included information indicating that if a party failed to appear at the hearing, the party must file a timely written request to reopen the hearing and must include information with that request showing why the party was entitled to reopen the hearing.

On March 16, 2017, claimant filed late requests to reopen the hearings regarding Hearing Decisions 16-UI-57268 and 16-UI-57306 with OAH. On March 23, 2017, ALJ Kangas issued Order No. 17-UI-79486, denying claimant's request to reopen the hearing regarding Hearing Decision 16-UI-57306 as untimely without a showing of good cause. On March 28, 2017, ALJ Kangas issued Order No. 17-UI-79791, denying claimant's request to reopen the hearing regarding Hearing Decision 16-UI-57268 also as untimely without a showing of good cause. On April 26, 2017, claimant filed late applications for review of Order Nos. 17-UI-79791 and 17-UI-79486 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 17-UI-79791 and 17-UI-79486. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0510 and 2017-EAB-0509, respectively).

CONCLUSIONS AND REASONS: Claimant's late applications for review of Orders are allowed. However, on *de novo* review those orders are affirmed.

Late Applications for Review. ORS 657.270(6) required that claimant's applications for review of Order Nos. 17-UI-79486 and 17-UI-79791 be filed no later than 20 days of their dates of mailing, March 23 and March 28, 2017, respectively. However, claimant filed her applications for review on April 26, 2017. Accordingly, they were late. OAR 471-041-0070 (August 30, 2011) provides that the filing period for applications for review 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). Here, the orders regarding which claimant requested review were mailed to an address different from the return address listed on her applications for review.

From that information, we infer that claimant failed to file timely applications for review because she did not receive the orders in question in the regular course of the mail, which likely was beyond her reasonable control. The evidence of record also is sufficient to show that she likely filed her applications for review within a reasonable time after she received the forwarded orders. Claimant therefore established good cause to extend the filing deadline to April 26, 2017, and her applications for review are allowed.

Late Requests to Reopen. Hearing Decisions 16-UI-57268 and 16-UI-57306, issued by ALJ Frank on April 14, 2016 and which dismissed claimant's requests for hearing, informed her that if she did not appear at a hearing she could request to reopen the hearing, and that, pursuant to OAR 471-040-0040, her request had to show, in writing, that factors or circumstances beyond her reasonable caused her to miss the hearing.¹ Moreover, in Order Nos. 17-UI-79486 and 17-UI-79791, ALJ Kangas took official notice of facts contained in OAH records that showed that in October 2016, OAH staff explained to claimant the request to reopen process and the requirements she had to meet to successfully obtain reopening. Order No. 17-UI-79486 at 3-4; Order No. 17-UI-79791 at 3-4. Despite that knowledge claimant failed to assert, in her reopen requests, any facts explaining why she waited until March 2017

¹ Hearing Decisions 16-UI-57268 and 16-UI-57306 at 2.

to file them, did not offer any information regarding her failures to appear at the April 14, 2016 hearings, and has not asserted that factors or circumstances beyond her reasonable control prevented her from doing so.

DECISION: Hearing Decisions 17-UI-79791 and 17-UI-79486 are affirmed. *Decisiones de Audiencia 17-UI-70791 y 17-UI-79486 son afirmadas.*

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

DATE of Service: May 16, 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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NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.

Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente. Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.