

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0535

Affirmed
Late Request to Reopen Denied

PROCEDURAL HISTORY: On February 10, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from December 18, 2016 to January 14, 2017 (decision # 113157). Claimant filed a timely request for hearing. On March 2, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for March 16, 2017 at 8:15 a.m., at which claimant failed to appear. On March 16, 2017, ALJ S. Lee issued Hearing Decision 17-UI-79022, dismissing claimant's request for hearing for failure to appear. On April 5, 2017, Hearing Decision 17-UI-79022 became final without claimant having filed a timely request to reopen. On April 7, 2017, claimant filed a late request to reopen. On April 19, 2017, ALJ Kangas reviewed claimant's late request to reopen and issued Hearing Decision 17-UI-81354, denying claimant's request. On May 3, 2017, claimant filed an application for review of Hearing Decision 17-UI-81354 with the Employment Appeals Board (EAB).

Claimant timely filed a written argument in which he argued that "explained once already" that he did actively seek work, contrary to decision # 113157, and that he should receive benefits for the weeks covered by that decision. Because claimant missed the March 16th hearing that was scheduled to cover decision # 113157, however, he is not entitled to a review of that decision unless he is allowed to reopen the March 16th hearing, and because claimant filed a late request to reopen, he is not entitled to a review of the reasons he missed the hearing unless he first establishes that he had good cause for filing his request to reopen late. Only if we decided that he did, and that claimant established good cause for missing the March 16th hearing, would he then be entitled to present evidence about whether he actively sought work during the weeks covered by decision # 113157. This decision is therefore confined to the issue of claimant's late request to reopen.

FINDING OF FACT: Claimant filed his request to reopen two days late for unknown reasons.

CONCLUSIONS AND REASONS: Claimant's late request to reopen must be denied.

A request to reopen must be filed within 20 days of the date the hearing decision was issued. ORS 657.270(5); OAR 471-040-0040(1)(b). Claimant filed his request to reopen 22 days after the hearing decision was issued, making his request to reopen late.

In order for a late request to reopen to be considered, “[t]he party requesting reopening shall set forth the reason(s) for filing a *late request* to reopen in a written statement” in which he shows that he had “good cause for failing to request reopening within the time allowed.” OAR 471-040-0041(1) and (4) (emphasis added). In this case, although claimant submitted a written statement in which he explained why he missed the March 16th hearing, he did *not* explain in his statement why he waited to file his request to reopen that hearing until two days after the filing deadline expired. Since claimant did not explain the reason(s) he filed his request late, much less establish good cause for filing late, claimant’s late request to reopen the March 16th hearing must be denied.

DECISION: Hearing Decision 17-UI-81354 is affirmed.

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

DATE of Service: May 23, 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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