

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0577-R

Reconsideration Granted
Appeals Board Decisions 2017-EAB-0577 Adhered to on Reconsideration

PROCEDURAL HISTORY: On January 13, 2017, the Oregon Employment Department (the Department) served notice of the following two administrative decisions: administrative decision # 142929 concluded that claimant voluntarily left work without good cause, and administrative decision # 192935 assessed a \$1,942 overpayment, a \$485.50 monetary penalty, and 18 penalty weeks based on decision # 142929. On February 2, 2017, both decisions became final, without requests for hearing having been filed. Claimant subsequently filed late requests for hearing on both decisions. On March 30, 2017, ALJ Kangas issued the following hearing decisions: Hearing Decision 17-UI-80330 dismissed claimant's hearing request on decision # 142929 as untimely, and Hearing Decision 17-UI-80272 dismissed claimant's request for hearing on decision # 192935 as untimely. Both hearing decisions were subject to claimant's right to renew her hearing requests by timely responding to appellant questionnaires. Claimant did not timely respond to the appellant questionnaires. On April 25, 2017, Hearing Decisions 17-UI-80330 and 17-UI-80272 became final without applications for review having been filed with the Employment Appeals Board (EAB). On May 11, 2017, claimant filed late applications for review with EAB. On May 16, 2017, EAB issued Appeals Board Decisions 2017-EAB-0577 and 2017-EAB-0578, dismissing claimant's applications for review as untimely.

On May 24, 2017, EAB received claimant's written argument. EAB will exercise its jurisdiction under ORS 657.290(3) to address some of the issues raised in claimant's written argument.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its reconsideration of Appeals Board Decisions 2017-EAB-0577 and 2017-EAB-0578. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0577-R and 2017-EAB-0578-R).

In Appeals Board Decisions 2017-EAB-0577 and 2017-EAB-0578, EAB found that claimant showed good cause for extending the timeline for filing her applications for review because she demonstrated that circumstances beyond her reasonable control prevented her timely filing. *See* ORS 657.875; OAR 471-041-0070(2) (March 20, 2014). EAB also found, however, that these circumstances ceased to exist after claimant learned about the hearing decisions that denied her late applications for a hearing in an April 14, 2017 conversation with a Department representative. Because claimant filed her applications

for review on May 11, 2017 – more than 7 days after the circumstances that prevented her timely filing ceased to exist – EAB concluded that she failed to file her applications for review within a “reasonable time” after the circumstances that prevented her timely filing ceased to exist, as required by OAR 471-041-0050(2)(b).

In her written argument, claimant described some of the difficult personal circumstances she has been encountering and refers to a conversation with a Department representative about the need to request a hearing. She provided no details about this conversation, such as the date on which it occurred and what was discussed. Without this information, we have no reason to change the conclusion we reached in Appeals Board Decisions 2017-EAB-0577 and 2017-EAB-0578 – that claimant did not act within a reasonable time to file her applications for review, once she learned about the need to do so.

For the reason explained above, find no error of fact or law in our decisions that would require correction, and adhere to Appeals Board Decisions 2017-EAB-0577 and 2017-EAB-0578 on reconsideration. *See* ORS 657.290(3) (reconsideration by EAB may include making a new decision “to the extent necessary and appropriate for the correction of a previous error of fact or law”).

DECISION: Reconsideration is granted. Appeals Board Decisions 2017-EAB-0577 and 2017-EAB-0578 are adhered to on reconsideration.

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

DATE of Service: June 1, 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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