

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0578

Late Applications for Review Dismissed

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 applications for review with EAB.

EVIDENTIARY MATTER: Claimant's submission of her response to the appellant questionnaire with her application for review is construed as a request for EAB to consider information offered into evidence, but not received into the hearing record, under OAR 471-041-0090(1) (October 29, 2016), which allows EAB to receive such information into evidence a necessary to complete the record. Claimant's response to the appellant questionnaire is necessary to complete the record, and EAB therefore considered her response when reaching this decision. Claimant's response to the appellant questionnaire has been marked as EAB Exhibit 1, and 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 objection in writing to EAB within 10 days of the date on which this decision was mailed. If no objection is received, or an objection is received and overruled, EAB Exhibit 1 will remain part of the record.

FINDINGS OF FACT: (1) At the time claimant received administrative decisions # 192935 and 142929, she had been evicted from her home, and was homeless. The manager of the place where she had been living prior to her eviction returned claimant's mail to the post office. EAB Exhibit 1.

(2) On April 14, 2017, claimant spoke to a Department representative and “renewed” her requests for hearing.¹

CONCLUSION AND REASONS: Although claimant established good cause for extending the period for filing her application for review, she failed to file her applications for review within a reasonable time after the circumstances that prevented her timely filing ceased to exist.

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). ORS 657.270(6) required claimant’s applications for review to be filed no later than February 2, 2017. Claimant’s applications for review were filed on May 11, 2017 and were therefore late.

At all times relevant to these decisions, claimant faced difficult personal circumstances: she had been evicted, was homeless, and had no access to her mail because mail received at the address where she had been living was returned to the post office. Based on this record we infer that these were circumstances beyond claimant reasonable control that prevented her from timely receiving and responding to Hearing Decisions 17-UI-80272 and 17-UI-80330.

Based on this record, however, we also infer that these circumstances ceased to exist on or about April 14, 2017. On that date, claimant contacted a Department representative, and learned about the hearing decisions that denied her untimely hearing requests. Claimant did not file her application for review until May 11, 2017. Because she filed her applications for review more than seven days after the circumstances that prevented her timely filing ceased to exist, *i.e.*, her lack of knowledge of the hearing decisions, she did not file her hearing requests within a reasonable time. Claimant’s applications for review must therefore be dismissed.

DECISION: The applications for review filed May 11, 2017 are dismissed. Hearing Decisions 17-UI-80272 and 17-UI-80330 remain undisturbed.

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

¹ We take official notice of this fact, which is contained in in Department records. OAR 471-041-0090(3) (October 29, 2006). Any party that objects to our taking notice of this fact must submit its objections to this office in writing, setting forth the basis of the objection, within ten days of the date on which this decision is mailed. Unless such an objection is received, the noticed fact will remain part of the record.

'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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.