

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0738-R

Request for Reconsideration Dismissed
Employment Appeals Board Decisions Undisturbed
Applications for Review Dismissed

PROCEDURAL HISTORY: On April 6, 2017, the Oregon Employment Department (the Department) served four notices of four administrative decisions: # 95418 concluded claimant was not available for work from February 12, 2017 to February 18, 2017; # 100536 concluded claimant was not available for work from February 19, 2017 to February 25, 2017; # 101306 concluded claimant was not available for work from March 5, 2017 to March 11, 2017; and #110708 concluded claimant was not available for work from March 5, 2017 to April 1, 2017. Claimant filed timely requests for hearing on all four decisions. On May 9, 2017, ALJ Lohr conducted a consolidated hearing, and on May 10, 2017 issued the following hearing decisions: Hearing Decision 17-UI-82961 affirmed decision # 95418; Hearing Decision 17-UI-82944 affirmed decision # 100536; Hearing Decision 17-UI-82956 affirmed decision # 101306; and Hearing Decision 17-UI-82989 modified decision # 110708 to deny benefits from March 5, 2017 to April 22, 2017 and allow benefits from April 23, 2017 to April 29, 2017. On May 30, 2017, Hearing Decisions 17-UI-82961, 17-UI-82944, 17-UI-82956 and 17-UI-82989 became final without claimant having filed timely applications for review with the Employment Appeals Board (EAB). On June 19, 2017, claimant filed late applications for review of all four hearing decisions. On June 21, 2017, EAB issued Employment Appeals Board Decisions 2017-EAB-0738, 2017-EAB-0739, 2017-EAB-0740 and 2017-EAB-0741, dismissing claimant's late applications for review. On June 21, 2017, claimant filed requests for reconsideration of all four decisions.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of claimant's requests for reconsideration of EAB Decisions 2017-EAB-0738, 2017-EAB-0739, 2017-EAB-0740 and 2017-EAB-0741. For case-tracking purposes, this decision is being issued in quadruplicate (EAB Decisions 2017-EAB-0738-R, 2017-EAB-0739-R, 2017-EAB-0740-R and 2017-EAB-0741-R).

CONCLUSIONS AND REASONS: Claimant's requests for reconsideration are dismissed.

After receiving EAB's June 21, 2017 decisions, claimant submitted an "Amendment [*sic*] to initial request" to EAB in which he expressed disagreement with those decisions. Although claimant did not

expressly request it, we construe claimant's disagreement with EAB's decisions as a request for EAB to reconsider those decisions.

EAB has the authority to reconsider its decisions on its own motion or upon request by any party. ORS 657.290(3); OAR 471-041-0145(1) (October 29, 2006). A party's request for reconsideration is subject to dismissal if does not include a statement that a copy of the request was provided to the other parties, in this case, ASM. Claimant's request did not include any such statement, and it is therefore dismissed.

Even if claimant had included a statement that he sent a copy of his request to ASM, or sent such a statement to the employer after-the-fact, the outcome of these cases would remain the same. Parties may request reconsideration to correct an error of material fact or law, or explain unexplained inconsistencies with the Department's rules, positions or practices. OAR 471-041-0145(1). Claimant's request neither asserted nor established that EAB made an error of fact with respect to identifying the reason claimant provided for having filed his applications for review late, nor that EAB made an error of law in its application of the law to the facts claimant provided. Nor has claimant asserted or shown that EAB's decision was inconsistent with the Department's rules, positions or practices. Claimant has not, therefore, shown that EAB should reconsider its decisions in these matters.

In his reconsideration request, claimant provided a "further explanation" for filing late applications for review, because he "worked 6 days a week during that time period and did not have the time and access to office equipment for correspondence." That information is new, because claimant never provided it to EAB before; generally speaking, EAB may not consider new information unless a party establishes that factors or circumstances beyond the party's reasonable control prevented the party from providing the information during the original request. *See accord* OAR 471-040-0090(2) (October 29, 2006). Claimant did not establish that to be the case with respect to the new information he provided.

Even if he had, however, these decisions would remain the same because claimant's busy work schedule and lack of access to office supplies would not have amounted to factors or circumstances that made filing timely applications for review beyond his reasonable control. The Office of Administrative Hearings (OAH) provided claimant with application for review forms with each of the hearing decisions for which claimant sought review, and claimant used the forms in his late requests. Claimant's possession and use of the forms suggests that claimant did not need office equipment to file his applications for review in these cases. Likewise, working six days per week did not create a condition whereby claimant was prevented from using a few moments before or after work, or on his one day off, to sign the application for review forms and send them to EAB. Claimant's new explanation for having filed late applications for review did not amount to good cause.

For all the reasons explained herein, claimant's requests for reconsideration are dismissed. We therefore adhere to our previous decisions remain undisturbed.

In reaching these decisions we note that claimant has requested EAB allow his late applications for review and review the hearing decisions in these cases because his ineligibility in these cases has resulted in an overpayment that will cause him severe financial hardship to repay. Although there is no law or rule under which EAB may waive the filing deadlines or take jurisdiction over these cases based on claimant's financial hardship, claimant may, as noted in our original decisions, contact the Department's overpayment unit to discuss his overpayment and repayment options. We also note based

upon claimant's initial applications for review in these matters and these requests for reconsideration that claimant will, in all likelihood, disagree with the outcome of these decisions. Appeal of these decisions is to the Oregon Court of Appeals. If claimant wishes to request further review of EAB's decisions in these matters, claimant may refer to the "NOTE" section, located both below and at the end of each of EAB's original decisions, for instructions on how to appeal these decisions.

DECISION: Claimant's requests for reconsideration are dismissed. Employment Appeals Board Decisions 2017-EAB-0738, 2017-EAB-0739, 2017-EAB-0740 and 2017-EAB-0741, and Hearing Decisions 17-UI-82961, 17-UI-82944, 17-UI-82956 and 17-UI-82989, all remain undisturbed.

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

DATE of Service: June 22, 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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