

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0746

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On December 20, 2016, the Oregon Employment Department (the Department) served notice of the following two administrative decisions, decisions, # 80704 and # 124052; both decisions concluded that claimant was not available for work from November 7 through December 17, 2016.¹ Both decisions became final on January 9, 2017, without requests for hearing having been filed. On February 3, 2017, the Department issued decision # 142834, which assessed a \$918 overpayment based on decisions # 80704 and # 124052. On February 23, 2017, decision # 142834 became final without a request for hearing having been filed. On May 26, 2017, claimant filed late hearing requests on all three decisions. On May 31, 2017, ALJ Kangas issued Hearing Decision 17-UI-84608, which dismissed claimant's hearing request on decision # 142834; Hearing Decision 17-UI-84609, which dismissed claimant's hearing request on decision # 124052; and Hearing Decision 17-UI-84610, which dismissed claimant's hearing request on decision # 80704. All three decisions were subject to claimant's right to renew her requests by responding to an appellant questionnaire by June 14, 2017. On June 19, 2017, claimant filed a late response to the appellant questionnaire and timely applications for review of all three hearing decisions. By letter dated June 20, 2017, the Office of Administrative Hearings notified claimant that because her response to the appellant questionnaire was late, the Office of Administrative Hearings (OAH) would not consider it or issue other hearing decision, and that Hearing Decisions 17-UI-84608, 17-UI-84609 and 17-UI-84610 remained in effect.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-84608, 17-UI-84609, and 17-UI-84610. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2017-EAB-0746, 2017-EAB-0747, and 2017-EAB-0748).

EVIDENTIARY MATTER: With her application for review, claimant included a copy of the response she submitted to her appellant questionnaire after the June 14 deadline set by the ALJ. Claimant's filing of her response to the appellant questionnaire with her applications for review is construed as a request for EAB to consider information not received into the hearing record. Under OAR 471-041-0090(1) (October 29, 2016), information offered, but not received into the hearing record, may be received into

¹ It appears that the Department mistakenly issued two decisions on the same issue.

evidence as 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.

CONCLUSION AND REASONS: Claimant failed to show good cause for her untimely hearing requests, and they should be dismissed.

ORS 657.269 provides that the Department's decisions become final unless a party files a request for hearing within 20 days after the date it is mailed. ORS 657.875 provides that the 20-day deadline may be extended a "reasonable time" upon a showing of "good cause." OAR 471-040-0010 (February 10, 2012) provides that "good cause" includes factors beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors ceased to exist.

Here, the deadline for claimant to file timely hearing requests on decisions #124052 and # 80704 was January 9, 2017, and the deadline to file a timely hearing request on decision # 142834 was February 23, 2017. Because claimant did not file her hearing requests until May 26, 2017, her requests were late. In her response to the appellant questionnaire, claimant explained why she did not timely submit her response to the appellant questionnaire, but provided no explanation why her hearing requests were late. Claimant therefore failed to demonstrate that an excusable mistake or any circumstances beyond her reasonable control prevented her from timely filing her hearing requests, and they should be dismissed.

DECISION: Hearing Decisions 17-UI-84608, 17-UI-84609 and 17-UI-84610 are affirmed.

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

DATE of Service: July 13, 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.

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.