

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0770**

*Application for Review Dismissed*

**PROCEDURAL HISTORY:** On November 30, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from October 30, 2016 to November 25, 2016 (decision # 62635). On December 2, 2016, claimant filed a timely request for hearing. On February 3, 2017, ALJ S. Lee conducted a hearing on decision # 62635, and on February 10, 2017 issued Hearing Decision 17-UI-76722, concluding claimant was not available for work from October 30, 2016 to December 17, 2016, but that she was available from December 18, 2016 to January 21, 2017.

On March 29, 2017, the Department served notice of a second administrative decision concluding claimant was not available for work, for a different reason, from February 26, 2017 to March 25, 2017. On April 3, 2017, claimant filed a timely request for hearing on decision # 73813.

On April 11, 2017, the Department served notice of a third administrative decision, this one concluding that claimant voluntarily left her job with ServPro of Gresham, Inc. on March 6, 2017, and that she had quit her job for personal reasons (decision # 83340).

On April 26, 2017, ALJ Janzen conducted a hearing on decision # 73813, and on April 27, 2017 issued Hearing Decision 17-UI-81977, concluding claimant was not available for work from February 26, 2017 to March 4, 2017, but that she was available for work from March 5, 2017 to April 15, 2017.

On May 1, 2017, decision # 83340 became final without claimant having filed a timely request for hearing. On May 9, 2017, claimant filed a late request for hearing on decision # 83340. On May 15, 2017, ALJ Kangas reviewed claimant's request and issued Hearing Decision 17-UI-83360, dismissing claimant's late request for hearing subject to her right to renew the request by responding to an appellant questionnaire by May 29, 2017. On May 29, 2017, the deadline to respond to the appellant questionnaire expired without claimant having submitted a response. On June 5, 2017, Hearing Decision 17-UI-83360 became final without claimant having filed an application for review with the Employment Appeals Board (EAB).

On June 15, 2017, claimant filed a late response to the appellant questionnaire and a late application for review with EAB. On June 26, 2017, the Office of Administrative Hearings (OAH) mailed a letter to the parties stating that claimant's questionnaire response was late and would not be considered. This matter is before EAB on claimant's June 15, 2017 late application for review of Hearing Decision 17-UI-83360.

**EVIDENTIARY MATTER:** Claimant's appellant questionnaire response is hereby admitted into evidence as EAB Exhibit 1. OAR 471-041-0090(2) allows admission of a party's new information into evidence provided that it is relevant and material to this determination, and factors or circumstances beyond the party's reasonable control, such as OAH's refusal to consider the information, prevented the information from previously being admitted into evidence. A copy of EAB Exhibit 1 is being mailed to the parties with this decision. Any party that objects to our admitting the exhibit into evidence must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. Unless such objection is received and sustained, the noticed fact will remain in the record at EAB Exhibit 1.

**CONCLUSIONS AND REASONS:** Claimant's late application for review of Hearing Decision 17-UI-83360 must be dismissed.

ORS 657.270(6) required claimant's application for review to be filed no later than June 5, 2017; it was filed on June 15, 2017. OAR 471-041-0065 (October 29, 2006). OAR 471-041-0070 (October 29, 2006) provides:

- (1) An application for review is timely if it is filed within 20 days of the date that OAH mailed the hearing decision sought to be reviewed. EAB shall dismiss a late application for review, unless the filing period is extended in accordance with this rule.
- (2) The filing period may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875.
  - (a) "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing.
  - (b) "A reasonable time" is seven days after the circumstances that prevented timely filing ceased to exist.

Claimant provided various reasons for not having filed a timely application for review in this case. She argued that she did not know that there would be more than one decision related to her claim or that the Department's work separation decision was a separate issue she needed to appeal. However, claimant had, in the course of her claim for unemployment insurance benefits, received at least two separate availability decisions and appealed both of them. It therefore does not make sense that she would not also realize she needed to appeal the Department's work separation decision, too.

Claimant argued that she thought the April 26<sup>th</sup> hearing with ALJ Janzen was about both the availability decision (decision # 73818) and the work separation decision (decision # 83340). However, at the time claimant requested a hearing on decision # 73818, the Department had not yet issued decision # 83340.

It would therefore have been impossible for claimant to have requested a hearing on both decisions at the same time.

Lastly, claimant argued that after filing her May 1<sup>st</sup> late request for hearing on decision # 83340, she waited for information about another hearing and nothing arrived. She argued that she then contacted the Department on or about June 15<sup>th</sup>. Claimant's argument that she waited six weeks for a hearing on decision # 83340 is inconsistent with her argument that she thought that the April 26<sup>th</sup> hearing covered both issues. Regardless, claimant did not assert or show that she did not receive Hearing Decision 17-UI-83360 dismissing her request for hearing on decision # 83340, or that she did not receive the questionnaire, and it is notable that, upon speaking with a Department employee on June 15<sup>th</sup>, claimant immediately responded to the questionnaire using the forms that had been mailed to her on May 15<sup>th</sup>. Claimant's use of those forms suggests that she likely received Hearing Decision 17-UI-83360, with its accompanying questionnaire and application for review forms, shortly after it was mailed. We reasonably infer from evidence that she received that decision that claimant also received notice that the questionnaire was due by May 29<sup>th</sup> and the application for review was due by June 5<sup>th</sup>, yet did not file either within the designated time periods. She therefore did not have good cause for failing to meet those deadlines because she was waiting for some other document or information about a hearing.

Given claimant's arguments and the circumstances of this case, we find it more likely than not that claimant did not file a timely application for review in this case because she was confused about receiving multiple decisions from the Department and confused about needing to request and attend multiple hearings about her eligibility for and disqualification from receipt of benefits. Claimant's confusion is understandable, given the complexity of her case and the overlapping subject matter involved in the three decisions the Department issued to her. Unfortunately, though, confusion does not amount to "good cause" for filing a late application for review since, generally speaking, it is considered to be within a party's reasonable control to read documents carefully and contact the Department to resolve any confusion they feel over what those documents mean. Claimant did not establish good cause to extend the time allowed for filing her application for review in this matter.

Because the application for review was filed after the 20-day deadline provided by ORS 657.270(6), and good cause to extend the time allowed has not been shown, the application for review must be dismissed.

**DECISION:** The application for review filed June 15, 2017 is dismissed. Hearing Decision 17-UI-83360 remains undisturbed.

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

**DATE of Services: June 28, 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](http://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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