

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0797

Affirmed
Late Request For Hearing Dismissed

PROCEDURAL HISTORY: On March 31, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 144913). Decision # 144913 became final on April 20, 2017 without a request for hearing having been filed. On April 28, 2017, claimant filed a late request for hearing. On May 3, 2017, ALJ Kangas issued Hearing Decision 17-UI-82461 dismissing claimant's request for hearing as untimely, subject to reconsideration if claimant timely responded to an Appellant Questionnaire enclosed with that decision. On May 17, 2017, claimant timely responded to the Appellant Questionnaire and filed an application for review of Hearing Decision 17-UI-82461 to Employment Appeals Board (EAB). By letter dated May 18, 2017, the Office of Administrative Hearings (OAH) notified claimant that Hearing Decision 17-UI-84461 had been vacated and that a hearing would be scheduled on the timeliness of claimant's request for hearing and, if appropriate, the merits of administrative decision # 144913. On June 14, 2017, ALJ Amesbury conducted a hearing at which the employer did not appear, and on June 16, 2017 issued Hearing Decision 17-UI-85943, dismissing claimant's request for hearing as untimely. On July 5, 2017, claimant filed an application for review with EAB.

FINDINGS OF FACT: (1) Sometime before March 17, 2017, the Department performed a routine audit which indicated that claimant had failed to report compensation he earned and a work separation that occurred while claiming benefits. On March 17, 2017, a Department representative mailed a letter to claimant informing him of the results of the audit and enclosing a questionnaire to obtain additional information from him about the matters discovered during the audit. The letter stated that the Department needed to receive a response to the questionnaire from claimant within five days.

(2) On April 3, 2017, claimant mailed the completed questionnaire to the Department. On April 4, 2017, claimant contacted by phone the Department representative who had sent the questionnaire to him to inform her that he had mailed it and to tell her of its contents. The representative told claimant that

since he had not submitted his questionnaire with the required five day period, the Department had issued a decision on March 31, 2017 that concluded he was disqualified from benefits based on his work separation. Claimant had not yet received the decision. Claimant orally told the representative the information that was in his response to the questionnaire since she had not yet received it. The representative told claimant that the March 31 administrative decision was final and, regardless of what he had orally told her, its outcome had not changed. The representative told claimant, however, that she would look at his responses to the questionnaire when she received it.

(3) On or about April 12, 2017, claimant received administrative decision # 144913, which disqualified him from benefits based on a work separation. Administrative decision # 144913 also stated in all capitalized letters, “IF YOU DO NOT AGREE WITH THIS DECISION SEE THE ENCLOSED INFORMATION FOR YOUR APPEAL RIGHTS.” Record Document, March 31, 2017 Administrative Decision # 144913 at 2. The administrative decision also stated, “Any appeal from this decision must be filed on or before Apr[il] 20, 2017 to be timely,” and provided information on how claimant could submit any such appeal. *Id.* Because the Department representative had told him on April 4 that she would look at his responses to the questionnaire when she received them, claimant believed the representative would have a “follow up” conversation with him before decision # 144913 became effective. Audio at ~33:07.

(4) On April 28, 2017, claimant called the Department because the representative had not followed up with him after their phone conversation on April 4, 2017. In that call, a representative told claimant that if he did not agree with administrative decision # 144913, he was required to file a request for hearing. On that day, claimant filed a request for hearing on decision # 144913 by phone.

CONCLUSIONS AND REASONS: Claimant did not show good cause for his late filing of the request for hearing on administrative decision # 144913. Claimant’s request for hearing is dismissed.

ORS 657.269 provides that unless a request for hearing is filed within 20 days after the Department issues and mails an administrative decision, the decision becomes final and benefits shall be paid or denied in accordance with it. ORS 657.875 provides that the 20 day period in which a hearing must be requested may be extended for a reasonable time under the particular circumstances of the case upon a showing of good cause. OAR 471-040-0010(1) (February 10, 2012) states that “good cause” exists when an action, delay or failure to act arises from an excusable mistake or from factors beyond the applicant’s reasonable control. OAR 471-040-0010(3) states that a “reasonable time” to extend the period in which a request for hearing may be filed is seven days after the circumstances that prevented a timely filing ceased to exist. Claimant filed his request for hearing on decision # 144913 on April 28, 2017, 28 days after the decision was issued and mailed. Claimant’s request was not timely filed.

At hearing, claimant testified that based on his prior experience and the clear language in decision # 144913 he knew that any request for hearing needed to be filed on or before April 20, 2017. Claimant also testified that he “misunderstood” the Department representative’s comment made to him on April 4, 2017 --that she would look at his appellant questionnaire when she received it-- to mean that decision # 144913 was not necessarily final and might be modified as a result of his written responses to the appellant questionnaire. Claimant’s conclusion – that decision # 144913 was not the Department’s final decision – was not reasonable, given the representative’s statement that the decision was final, regardless of the information claimant provided to her and given the clear instructions in decision #

144913 that he needed to file a hearing request by April 20, 2017 if he disagreed with the decision. If claimant believed the information the Department representative gave him contradicted the instructions he had received in decision # 144913, it was well within his reasonable control to contact the Department again and request clarification. In addition, although claimant may have erred in interpreting the implications of his April 4 conversation with the Department representative, his error was not an “excusable mistake for purposes of establishing good cause for his late request for hearing. Claimant’s mistake did not raise due process issues and was not the result of inadequate notice, reasonable reliance on another person, or the inability to follow directions dispute substantial efforts to comply. *See Appeals Board Decision, 2016-EAB-1435, December 28, 2016.*

Claimant has failed to show good cause for his late hearing request, and his request for hearing is therefore dismissed as not timely filed. Based on this result, administrative decision #144913 will remain undisturbed.

DECISION: Hearing Decision 17-UI-85934 is affirmed.

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

DATE of Service: August 2, 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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