

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0802

Affirmed
Late Requests for Hearing Dismissed
Ineligible Weeks 06-17, 08-17 and 10-17

PROCEDURAL HISTORY: On April 4, 2017, the Oregon Employment Department (the Department) served notice of two administrative decisions, the first concluding that claimant did not actively seek work during the week including February 5 through February 11, 2017 (week 06-17) and was ineligible for benefits for that week (decision # 153938), and the second concluding claimant did not actively seek work during the weeks including February 19 through February 25 and March 5 through March 11, 2017 (weeks 08-17 and 10-17) and was ineligible for benefits for those weeks (decision # 154459). Each administrative decision gave claimant notice that an appeal of the decision had to be filed on or before April 24, 2017 to be timely. On April 24, 2017, decisions # 153938 and 154459 became final without claimant having filed requests for hearing.

On May 17, 2017, claimant filed late telephone requests for hearing on decisions # 153938 and 154459. On May 30, 2017, the Office of Administrative Hearings (OAH) mailed notice of a consolidated hearing scheduled for June 13, 2017 to address two issues regarding each case. The first issue to be addressed was whether claimant's requests for hearing were filed within the 20-day time limit and if not, whether he demonstrated good cause for extending the time limit a reasonable time. The second issue to be determined was whether claimant actively sought work during the weeks at issue, but only if claimant first demonstrated good cause for his late hearing requests. On June 13, 2017, ALJ M. Davis conducted a consolidated hearing and issued Hearing Decision 17-UI-85587, dismissing claimant's request for hearing regarding decision # 153938 as late without a showing of good cause and Hearing Decision 17-UI-85594, dismissing claimant's request for hearing regarding decision # 154459 also as late without a showing of good cause. Both administrative decisions remained undisturbed.

On July 1, 2017, claimant filed timely applications for review of Hearing Decisions 17-UI-85587 and 17-UI-85594 with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-85587 and 17-UI-85594. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0801 and 2017-EAB-0802).

FINDINGS OF FACT: (1) On or about February 6, 2017, claimant filed an initial claim for unemployment benefits. Thereafter, he claimed and received benefits or waiting week credit for the weeks including February 5 through February 11, 2017 (week 06-17), February 19 through February 25, 2017 (week 08-17) and March 5 through March 11, 2017 (10-17).

(2) On April 4, 2017, the Department mailed decisions # 153938 and 154459 to claimant's address of record on file with the Department. Those decisions concluded that claimant was ineligible for benefits for the weeks claimed because he did not actively seek work in accordance with the Department's eligibility rules. Each decision notified claimant that if he did not agree with the decision he could request a hearing, and that the request had to be filed on or before April 24, 2017 to be timely.

(3) Claimant received and read decisions # 153938 and 154459. Although he did not agree with the decisions, he did not file an appeal on either decision by April 24, 2017 because he believed he had provided the Department with all of necessary information about his work searches during the week of March 31, 2017 and did not need to request hearings.

(4) On or about May 9 and May 11, 2017, the Department sent claimant overpayment decisions based on the finality of decisions # 153938 and 154459 requiring claimant to repay the benefits he previously received. On May 17, 2017, claimant filed late requests for hearings on decisions # 153938 and 154459.

CONCLUSIONS AND REASONS: We agree with the ALJ. Claimant's late requests for hearing regarding decisions # 153938 and 154459 are dismissed as untimely without a showing of good cause.

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.

In these cases, the deadline for claimant to file a timely request for hearing on decisions # 153938 and 154459 expired on April 24, 2017; claimant did not file his requests for hearing until more than three weeks later, on May 17, 2017, making his requests late. At hearing, claimant explained that he did not file requests for hearing by April 24 because he believed that by sending in to the Department all of the necessary information about his work searches during the week of March 31, 2017, he did not need to file appeals. Audio Record ~ 12:30 to 13:30. Although claimant obviously was mistaken, because he did not file hearing requests out of caution or check with the Department to clarify his need to do so, he failed to show that his mistake was excusable or that his failure to file timely hearing requests was caused by factors beyond his reasonable control, thereby failing to establish good cause for missing the appeal deadlines. For that reason, we agree with the ALJ that claimant's late requests for hearing on decisions # 153938 and 154459 are dismissed and those decisions remain final as a matter of law.

DECISION: Hearing Decisions 17-UI-17-UI-85587 and 17-UI-85594 are affirmed.

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

DATE of Service: July 31, 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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