

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0917

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On February 1, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 100933). On February 21, 2017, decision # 100933 became final without claimant having filed a timely request for hearing. On April 20, 2017, the Department served notice of an administrative decision assessing a \$1,810 overpayment that claimant is required to repay (decision # 115428). On May 1, 2017, decision # 115428 became final without claimant having filed a timely request for hearing. On May 8, 2017, claimant filed late requests for hearing by telephone. On May 11, 2017, ALJ Kangas issued Hearing Decision 17-UI-83164, dismissing claimant's late request for hearing on decision # 115428, and Hearing Decision 17-UI-83168, dismissing claimant's late request for hearing on decision # 100933, both subject to claimant's right to renew her requests by responding to appellant questionnaires by May 25, 2017. On May 18, 2017, claimant responded to the questionnaires. On June 5, 2017, the Office of Administrative Hearings (OAH) mailed letters canceling Hearing Decisions 17-UI-83164 and 17-UI-83168. On July 7, 2017, ALJ Wyatt conducted two hearings, and on July 14, 2017 issued Hearing Decision 17-UI-88034, re-dismissing claimant's late request for hearing on decision # 100933, and Hearing Decision 17-UI-88071, re-dismissing claimant's late request for hearing on decision # 115428. On July 29, 2017, claimant filed applications for review of both decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-88034 and 17-UI-88071. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0916 and 2017-EAB-0917).

FINDINGS OF FACT: (1) Claimant received decisions # 100933 and 115428 shortly after they were mailed to her by the Department.

(2) Decision # 100933 denied claimant benefits based on a job she had quit, and stated on page 2, "If you do not understand this decision, contact the Unemployment Insurance Center above immediately." DR Exhibit 1, case no. 2017-UI-66525. It also stated, "IF YOU DO NOT AGREE WITH THIS DECISION SEE THE ENCLOSED INFORMATION FOR YOUR APPEAL RIGHTS." *Id.* The

decision also stated, “Any appeal from this decision must be filed on or before Feb 2, 2017 to be timely.” *Id.* The enclosed information included a request for hearing tear-off form and instructions for requesting a hearing. Claimant looked at decision # 100933, thought the decision was final, concluded she did not have any recourse, and took no action on it.

(3) Decision # 115428 assessed a \$1,810 overpayment based on decision # 100933, and stated on page 2, “If you have not had a hearing on the issue that caused the overpayment, and you wish to do so now, you must specifically request a hearing on that earlier administrative decision.” DR Exhibit 1, case no. 2017-UI-66431. It also stated, “If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before May 1, 2017 to be timely.” *Id.* The enclosed information also included a request for hearing tear-off form and instructions about how to request a hearing. Claimant looked at the decision but did not read the request for hearing advisories or the deadline for requesting a hearing.

(4) Claimant did not request a hearing on either decision until several weeks after she received decision # 115428 when she had a phone call with a Department employee about the overpayment.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant’s late requests for hearing should be dismissed.

ORS 657.269 requires that requests for hearing on the Department’s administrative decisions be filed within 20 days after the administrative decisions are mailed. ORS 657.875 allows the 20-day period to be extended “a reasonable time” upon a showing of “good cause.” OAR 471-040-0010 defines a “reasonable time” as seven days from the date the circumstances that prevented a timely filing ceased to exist, and “good cause” as an excusable mistake or factors beyond an applicant’s reasonable control.” OAR 471-040-0010(1)(b)(B) specifically states, “Good cause does not include: Not understanding the implications of a decision or notice when it is received.”

It appears in this case that the fundamental reason claimant filed late requests for hearing in these cases was that she did not understand the implications of either decision. She mistakenly thought that decision # 100933 was final and did not understand that it would result in an overpayment until she received decision # 115428, and mistakenly believed decision # 115428 was also final and she had no recourse. However, not understanding the implications of those decisions when they were received is specifically excluded from the definition of “good cause.”

Additionally, claimant’s failure to read the decisions, which included request for hearing advisories, attachments, and inserts, and plainly stated the deadlines for requesting hearings on the decisions, appears to have been within claimant’s reasonable control. Although claimant cited to having vision problems preventing her from reading or comprehending the decisions, claimant was aware of her vision problems, aware she had documents she needed to read and understand, and it is more likely than not that it remained within claimant’s reasonable control to seek assistance to read or understand the importance of the documents the Department mailed to her. Although claimant’s failure to seek such assistance was, likely, the result of mistakes on claimant’s part, the mistakes were not “excusable” for purposes of these cases because they were not the result of inadequate notice, reasonable reliance on another person, or the inability to follow directions despite substantial efforts to comply. *See accord*

Employment Appeals Board Decision 2017-EAB-0838 (August 8, 2017); Employment Appeals Board Decision 2016-EAB-1435 (December 28, 2016).

Claimant has not shown good cause in either case, and her late requests for hearing must therefore be denied. Decisions # 100933 and 115428 remain undisturbed.

DECISION: Hearing Decisions 17-UI-88034 and 17-UI-88071 are affirmed.

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

DATE of Service: August 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.

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.