

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1050

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On March 30, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from January 22, 2017 to February 18, 2017 (decision # 131135). On April 19, 2017, decision # 131135 became final without claimant having filed a timely request for hearing. On June 21, 2017, claimant filed a late request for hearing. On June 26, 2017, ALJ Kangas issued Hearing Decision 17-UI-86542, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by July 10, 2017. On July 8, 2017, claimant mailed his appellant questionnaire response. On August 11, 2017, ALJ McGorin conducted a hearing and issued Hearing Decision 17-UI-90199, re-dismissing claimant's late request for hearing. On August 31, 2017, claimant filed an application for review of Hearing Decision 17-UI-90199 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) At all relevant times, claimant was an experienced unemployment insurance claimant with at least eleven prior claims; claimant's address of record with the Department has been a P.O. Box in Medford, Oregon; and claimant resided near Trinity Center, California. Claimant generally checked his mailbox every few months and did not provide the Department with an address at which he checked for mail more frequently.

(2) Claimant last claimed benefits on March 27, 2017.¹ Claimant checked his mailbox sometime prior to March 30th, when the Department mailed him notice of decision # 131135. He next checked his mailbox on June 20, 2017, at which time he received a copy of decision # 131135. Claimant disagreed with the decision and called the Department to request a hearing the next day.

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

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so 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. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

ORS 657.269 provides that parties have 20 days after an administrative decision is mailed to file a timely request for hearing. ORS 657.875 provides that the 20-day time period may be extended “a reasonable time” upon a showing of “good cause.” OAR 471-040-0010 defines “good cause” to include an excusable mistake or factors beyond the applicant’s reasonable control, and “reasonable time” as seven days after the circumstances that prevented a timely filing ceased to exist.

There is no dispute that claimant called the Department to request a hearing within a day of finding out about decision # 131135. His request was, therefore, filed within a “reasonable time.” He did not, however, show that he had “good cause” to extend the filing period in this case. The reason claimant did not file a timely request for hearing in this case was that he did not know about decision # 131135; the reason claimant did not know about decision # 131135 was that he did not check his mailbox at the address he provided to the Department for business regarding his claim for approximately three months, despite having just filed a weekly claim for weekly benefits only three days before that decision was mailed. Unemployment insurance claimants are reasonably expected to maintain contact with the Department during the period of time in which they are actively claiming benefits, which includes keeping the Department informed of their address and regularly checking at that address for mail from the Department about their unemployment insurance claims. Although claimant did not live near his address of record with the Department, he did not show that it was not within his reasonable control to check his mailbox at his Medford address of record, have someone check it on his behalf, or provide the Department with an address he did check for mail more frequently than every few months, especially given the proximity of the events at issue to claimant’s most recent claim for weekly benefits. Although claimant’s failure to check his mailbox, have it checked, or provide the Department with an address where he did check for mail was likely a mistake, it was not an excusable mistake because it did not, for example, raise a due process issue or result from inadequate notice, reasonable reliance on another or the inability to follow directions despite substantial efforts to comply. Because claimant’s late filing was not the result of a circumstance beyond his reasonable control or an excusable mistake, he has not shown good cause to extend the filing deadline and his late request for hearing must be dismissed. Decision # 131135 remains undisturbed.

DECISION: Hearing Decision 17-UI-90199 is affirmed.

J. S. Cromwell and D. P. Hettle.

DATE of Service: September 27, 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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