

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1051

Affirmed
Late Requests to Reopen Denied

PROCEDURAL HISTORY: On May 2, 2017, the Oregon Employment Department (the Department) served two notices of two administrative decisions, one concluding that claimant was not available for work from January 8, 2017 to March 25, 2017 (decision # 80956) and the other concluding that claimant was not available for work from April 2, 2017 to April 22, 2017 (decision # 82349). Claimant filed timely requests for hearing on both decisions. On May 23, 2017, the Office of Administrative Hearings (OAH) mailed notice of a consolidated hearing scheduled for June 6, 2017, at which claimant failed to appear. On June 6, 2017, ALJ Seideman issued Hearing Decisions 17-UI-84998 and 17-UI-85000, dismissing claimant's requests for hearing in both cases for failure to appear. On June 26, 2017, Hearing Decisions 17-UI-84998 and 17-UI-85000 became final without claimant having requested that the hearing be reopened. On August 14, 2017, claimant filed late requests to reopen the June 6, 2017 hearing. ALJ Kangas reviewed claimant's requests, and on August 22, 2017 issued Hearing Decisions 17-UI-90878 and 17-UI-90880, denying claimant's late requests to reopen. On August 31, 2017, claimant filed applications for review of Hearing Decisions 17-UI-90878 and 17-UI-90880 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-90878 and 17-UI-90880. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-1051 and 2017-EAB-1052).

Claimant submitted a written argument to EAB in which he discussed his work history, schooling, a possible health condition and his overpayment liability to the Department. Unfortunately, the only issue before EAB at this time is whether claimant established good cause for filing his requests to reopen the June 6th hearing late. EAB therefore considered claimant's written argument only to the extent it was relevant and material to the issue before us at this time.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant's late requests to reopen should be denied.

ORS 657.270(5)(a)(B) provides that parties have 20 days after the issuance of the written decision to file a request to reopen. Claimant filed his requests almost two months late. ORS 657.875 allows the 20-day time period to be extended “a reasonable time” upon a showing of “good cause.” OAR 471-040-0041(1)(a) (February 10, 2012) provides that claimant must show “good cause for failing to request reopening within the time allowed.” OAR 471-040-0041(2) defines “good cause” as when “an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant’s reasonable control.” OAR 471-040-0041(3) defines “a reasonable time” as “seven days after the circumstances that prevented a timely filing ceased to exist.”

In his request to reopen, claimant explained that he failed to appear at the June 6th hearing because, for reasons unknown, he did not receive notice of the hearing. He explained that he requested to reopen the hearing because he received a letter with an administrative decision stating his claim was denied, and he owes money to the Department. He did not include any additional information in his request to reopen or in his written argument about when those events occurred or why he waited so long to file a request to reopen these matters. Therefore, claimant has not shown either that he had good cause for failing to request reopening within the 20-day period following issuance of the decisions dismissing his requests for hearing for failure to appear, or that when he filed his requests to reopen on August 14th that that date was within the 7-day “reasonable time” period after the circumstances that had prevented a timely filing ended. Absent any explanation, claimant has not shown good cause for the late reopen requests, and his requests must be denied.

DECISION: Hearing Decisions 17-UI-90878 and 17-UI-90880 are affirmed.

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

DATE of Service: September 25, 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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