

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1067

Hearing Decision 17-UI-92002 Vacated
Late Applications for Review Dismissed

PROCEDURAL HISTORY: On June 6, 2017, the Oregon Employment Department (the Department) served two notices of two administrative decisions, one concluding claimant did not actively seek work from April 9, 2017 to May 27, 2017 (decision # 165554), and the other concluding that claimant was not able to work or available for work from May 28, 2017 to June 3, 2017 (decision # 170751). Claimant filed a timely request for hearing on both decisions. On July 10, 2017, the Office of Administrative Hearings (OAH) mailed notices of a hearing scheduled for July 25, 2017. On July 25, 2017, ALJ Murdock placed a call to claimant to participate in his hearing, at which time claimant orally withdrew his hearing requests. On July 25, 2017, ALJ Murdock issued Hearing Decisions 17-UI-88852 and 17-UI-88854, dismissing claimant's hearing requests. On August 14, 2017, both hearing decisions became final without claimant having filed applications for review with the Employment Appeals Board (EAB). On September 6, 2017, claimant filed a document that he labeled as pertaining to case numbers 2017-UI-68073 and 2017-68074, acknowledged having "cancelled my last hearing," and asked that we "consider giving me another appeal hearing." OAH processed that document, and, on September 6, 2017, with respect to case number 2017-UI-68073 only, ALJ Kangas issued Hearing Decision 17-UI-92002 purporting to deny claimant's late "reopen request." OAH then forwarded claimant's September 6, 2017 filings to EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of these matters. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-1066 and 2017-EAB-1067).

CONCLUSIONS AND REASONS: Hearing Decision 17-UI-92002 is vacated as being issued without jurisdiction. Claimant's late applications for review should be dismissed.

Hearing Decision 17-UI-92002. OAH construed claimant's September 6, 2017 filing as a request to reopen the July 25th hearing as to case number 2017-UI-68073 only. The record in these matters does not suggest why the filing was not also applied to case number 2017-UI-68074; regardless, OAH did not have a statutory basis for considering the September 6th filing as a request to reopen or for denying it on the basis of claimant's late filing since reopen requests occur when the party filing the request "failed to

appear at the hearing.” See ORS 657.270(5)(c)(A); OAR 471-040-0040(1)(a). In this case, claimant’s hearing requests were dismissed not because he failed to appear at the hearing, but because he withdrew his request for hearing before the hearing was ever convened. Compare ORS 657.270(7)(a)(A), ORS 657.270(7)(a)(C). The proper jurisdiction for a request for review of a hearing decision dismissing a request for hearing based upon a withdrawal lies with the Employment Appeals Board. See ORS 657.270(6); ORS 657.270(7)(c). For those reasons, OAH did not have jurisdiction to review claimant’s request or Hearing Decision 17-UI-92002; that decision is therefore vacated.

Applications for Review. OAR 471-041-0060(1) defines “application for review” as being any written request for “review of a specific hearing decision” that “expresses intent to appeal a specific hearing decision.” Claimant’s September 6th filing satisfies that definition as to both of these matters; we therefore construe the September 6th filing as applications for review of Hearing Decisions 17-UI-88852 and 17-UI-88854, and we proceed to review these cases under the applicable laws and rules.

ORS 657.270(6) and ORS 657.270(7)(c) provide that parties have 20 days after the date a hearing decision was mailed to them to file a timely application for review with EAB. In these cases, claimant’s deadline was August 14, 2017. He did not file his applications for review until September 6, 2017, making both applications for review late.

Late Applications for Review. ORS 657.875 provides that the deadline for filing an application for review may be extended “a reasonable time” upon a showing of “good cause.” “A reasonable time” means seven days. OAR 471-041-0070(2)(b) (October 29, 2006). “Good cause” means “factors or circumstances beyond the applicant’s reasonable control prevented timely filing.” OAR 471-041-0070(2)(a). Late applications for review must include “a written statement describing the circumstances that prevented a timely filing.” OAR 471-041-0070(3).

In these cases, claimant submitted a written statement in which he explained why he withdrew his hearing requests, stating that he is new to claiming unemployment, was confused and did not understand what the hearings entailed or what the cases were regarding. He also explained that had he realized what the hearings were about or the implications of withdrawing his requests he would not have done it. Unfortunately, we cannot examine the reasons for claimant’s withdrawals or determine if he is entitled to new hearings in this case unless and until he establishes “good cause” for filing his applications for review several weeks late, and that he filed them within seven days of the date whatever circumstances caused his late filing ceased to exist. Although claimant provided a written statement to EAB, unfortunately he did not, as required, include a description of the circumstances that prevented a timely filing. On this record, claimant’s late applications for review must be denied.

In claimant’s written statement he referred to needing a payment plan to pay back any overpaid benefits resulting from these decisions. The existence or amount of any possible overpayment is not before EAB at this time; if claimant has any questions or would like information specific to the existence or amount of any overpaid benefits he owes, or to set up a payment plan, claimant should call his unemployment insurance center for additional information.

DECISION: Hearing Decision 17-UI-92002 is hereby vacated as being issued without jurisdiction. The applications for review filed September 6, 2017 are dismissed, and Hearing Decisions 17-UI-88852 and 17-UI-88854 remain undisturbed.

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

DATE of Service: September 18, 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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