

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1068

Applications for Review Dismissed

PROCEDURAL HISTORY: On June 28, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not eligible for benefits from January 29, 2017 through June 24, 2017 (decision # 112139). On July 18, 2017, decision # 112139 became final without claimant having filed a request for hearing. On June 29, 2017, the Department served notice of an administrative decision assessing an \$8,715 overpayment, a \$2,614.50 monetary penalty, and 52 penalty weeks (decision # 193562) based on decision # 112139. On July 19, 2017, decision # 193562 became final without claimant having filed a request for hearing. On July 25, 2017, claimant filed late requests for hearings on decisions # 112139 and # 193562.

On July 31, 2017, ALJ Kangas issued Hearing Decision 17-UI-89230 dismissing claimant's late request for hearing on decision # 112139, and Hearing Decision 17-UI-89231 dismissing claimant's late request for hearing on decision # 193562. Both decisions were subject to claimant's right to renew his requests by responding to an appellant questionnaire within 14 days of the date the decisions were mailed. On August 14, 2017, the Office of Administrative Hearings (OAH) received claimant's response to the questionnaires. On August 17, 2015, ALJ Kangas issued Hearing Decision 17-UI-90589, re-dismissing claimant's late request for hearing on decision # 112139, and Hearing Decision 17-UI-90586, re-dismissing claimant's late request for hearing on decision # 193562, as untimely without a showing of good cause. Hearing Decisions 17-UI-90589 and 17-UI-90586 stated that any appeal from those orders must be filed on or before September 6, 2017 to be timely. On September 7, 2017, claimant filed late applications for review with the Employment Appeals Board (EAB) for Hearing Decisions 17-UI-90589 and 17-UI-90586.

EAB considered the written argument claimant submitted with his application for review.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-90589 and 17-UI-90586. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-1068 and 2017-EAB-1069).

CONCLUSIONS AND REASONS: Claimant did not establish good cause to file an untimely application for review of Hearing Decisions 17-UI-90589 and 17-UI-90586, and his applications for review should be dismissed.

ORS 657.270(4) required the claimant's applications for review to be filed no later than September 6, 2017. Claimant filed the applications for review on September 7, 2017, as shown by the date stamped on the fax transmission of the applications for review. OAR 471-041-0065(1)(c) (October 29, 2006) (If faxed, the filing date is the receipt date stamped or written on the fax transmission by the public employee who receives the document). However, OAR 471-041-0070 (October 29, 2006) provides:

(1) An application for review is timely if it is filed within 20 days of the date that OAH mailed the hearing decision sought to be reviewed. EAB shall dismiss a late application for review, unless the filing period is extended in accordance with this rule.

(2) The filing period may be extended a reasonable time upon a showing of good cause as provided by
ORS 657.875.

(a) "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing.

The only information provided by claimant with his late applications for review was that his mother-in-law was in an accident and that he "did not return," presumably to his address of record, until September 6, 2017. OAH mailed the hearing decisions to claimant on August 21, 2017. Claimant did not explain when his mother-in-law was in the accident, whether he received the hearing decisions before he left his address, what time he returned on September 6, or why he did not file his application for review on September 6. Claimant also did not explain whether he arranged to have his mail checked while he was away from his address, given that he had just sent his appellant questionnaire responses to OAH on August 14, 2017, and reasonably could have expected that OAH would be mailing decisions to him, and should have been expecting them in the mail. Absent such explanations, claimant failed to show that his mother-in-law's accident prevented timely filing of his applications for review. Claimant therefore failed to establish good cause to have the period extended.

Because the applications for review of Hearing Decisions 17-UI-90589 and 17-UI-90586 were filed after the 20-day deadline provided by ORS 657.270(4), and good cause to extend the time allowed has not been shown, the applications for review must be dismissed.

DECISION: The applications for review of Hearing Decisions 17-UI-90589 and 17-UI-90586 filed September 7, 2017 are dismissed. Hearing Decisions 17-UI-90589 and 17-UI-90586 remain undisturbed.

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

DATE of Service: September 12, 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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