

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1153

Affirmed
Late Requests to Reopen Denied

PROCEDURAL HISTORY: On March 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant that did not actively seek work during the weeks of February 12 through March 18, 2017 (decision # 143557). On April 12, 2017, decision # 143557 became final because no appeal was filed. On May 31, 2017, the Department served notice of a second administrative decision concluding that claimant was overpaid \$254 and must repay this amount to the Department (decision # 93533). On June 12, 2017, claimant filed a late request for hearing on decision # 143557 and a timely request for hearing on decision # 93533. On June 22, 2017, the Office of Administrative Hearings (OAH) mailed notice of hearings for decision # 143557 on July 6, 2017 at 1:30 p.m., and decision # 93533 on July 6, 2017 at 2:30 p.m., at which claimant failed to appear. On July 7, 2017, ALJ Murdock issued Hearing Decisions 17-UI-87494 and 17-UI-87492, dismissing claimant's requests for hearing on both decisions because claimant failed to appear. On July 27, 2017, Hearing Decisions 17-UI-87494 and 17-UI-87492 became final without claimant having requested that the hearings be reopened. On August 29, 2017, claimant filed late requests to reopen the July 6, 2017 hearings. ALJ Kangas reviewed claimant's requests, and on September 5, 2017, issued Hearing Decisions 17-UI-91903 and 17-UI-91904, denying claimant's late requests to reopen. On September 19, 2017, claimant filed applications for review of Hearing Decisions 17-UI-91903 and 17-UI-91904 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-91903 and 17-UI-91904. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-1053 and 2017-EAB-1054).

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. 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.”

ALJ Murdock issued Hearing Decisions 17-UI-87494 and 17-UI-87492 on July 7, 2017. Hearing Decisions 17-UI-87494 and 17-UI-87492 both state, “Any appeal from this Order must be filed on or before July 27, 2017 to be timely.” Claimant filed his requests for reopen on August 29, 2017, more than one month late. In his requests to reopen, claimant explained that he failed to appear at the July 6, 2017 hearings because he was unable to contact anyone when he called in for his hearing. Claimant did not include any additional information in his requests to reopen about why he waited so long to file a request to reopen these matters. Therefore, claimant has not shown 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 29 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-91903 and 17-UI-91904 are affirmed.
Decisiones de las Audiencias 17-UI-91903 y 17-UI-91904 quedan confirmadas.

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

DATE of Service: October 2, 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.

NOTA: *Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en courts.oregon.gov. En este sitio web, hay información disponible en español.*

Por favor, ayúdenos mejorar nuestros servicios por llenar el formulario de encuesta sobre nuestro servicio de atención al cliente. *Para llenar este formulario, puede visitar <https://www.surveymonkey.com/s/5WQXNJH>. Si no puede llenar el formulario sobre el internet, puede comunicarse con nuestra oficina para una copia impresa de la encuesta.*