

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1169**

*Hearing Decisions 17-UI-93124 and 17-UI-93126 Affirmed*  
*Requests to Reopen Denied*

**PROCEDURAL HISTORY:** On September 21, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not able to work during the weeks of June 18, 2015 through September 12, 2015 (decision # 104336). On October 11, 2016, decision # 104336 became final without a timely request for hearing having been filed. On November 21, 2016, the Department served notice of an administrative decision assessing a \$968 overpayment, a \$193.60 monetary penalty and 7 penalty weeks (decision # 193620). On December 2, 2016, claimant filed an untimely request for hearing on decision # 104336 and a timely request for hearing on decision # 193620. On December 28, 2016 at 9:30, ALJ Frank convened a hearing on decision # 104336 at which claimant did not appear and issued Hearing Decision 17-UI-73730, dismissing claimant's request for hearing due to claimant's failure to appear. On December 28, 2016 at 10:45 a.m. ALJ Frank also convened at hearing on decision # 193620 at which claimant also did not appear and issued Hearing Decision 17-UI-73732, also dismissing claimant's request for hearing due to claimant's failure to appear. Both decisions stated that if claimant had not appeared at the hearing, she might request that the hearing be reopened by filing a request to reopen with the Office of Administrative Hearings (OAH) within 20 days of the mailing of the hearing decisions, which would have been by January 17, 2017, and if later-filed, claimant needed to show that factors or circumstances beyond her reasonable control prevented her from timely filing the request for hearing.

On August 31, 2017, claimant filed a request to reopen the hearings underlying Hearing Decisions 17-UI-73730 and 17-UI-73732. On September 14, 2017, ALJ Frank conducted a consolidated hearing on claimant's requests to reopen and on September 22, 2017 issued two hearing decisions, the first denying claimant's request to reopen the hearing underlying Hearing Decision 17-UI-73730 (Hearing Decision 17-UI-93124) and the second denying claimant's request to reopen the hearing underlying Hearing Decision 17-UI-73732 (Hearing Decision 17-UI-93126). On October 4, 2017, claimant filed applications for review of Hearing Decisions 17-UI-93124 and 17-UI-93126 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-93124 and 17-UI-93126. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-1168 and 2017-EAB-1169).

**FINDINGS OF FACT:** (1) Sometime before December 28, 2016, claimant received both notices of hearing which scheduled the hearing on the late request for hearing on decision # 104336 and on the merits of # 193620 for December 28, 2016. Claimant read the notices of hearing.

(2) On December 29 or 30, 2016, claimant consulted the notices of hearing since she had thought the hearings were both scheduled for that day. At that time, claimant realized that both hearings had actually been scheduled for December 28, 2016 and both had already occurred. Claimant was “down on herself” and did not act immediately to contact the Department or OAH to determine what, if anything, she could do in light of having missed both hearings. Audio at ~20:50. In addition, claimant was distracted from focusing on unemployment insurance matters at that time and placed them on the “back burner” due to having an important custody hearing scheduled in December 2016 and dealing with other legal proceedings in municipal court. Audio at ~22:56. Claimant thought contesting the unemployment matters was probably a “lost cause.” Audio at ~23:00.

(3) On March 16, 2017, claimant called OAH for information on what she could do if she wanted to challenge the conclusions of decisions # 104336 and # 193620 since she had failed to appear at the hearings on both scheduled for December 28, 2016. An OAH representative advised claimant she could request that both hearings be reopened and that she would need to show good cause to successfully reopen the hearings.

(4) After March 16, 2017, claimant did not promptly file requests to reopen because claimant started a demanding job, was attending school, dealing with child custody proceedings and exercising parenting time with her daughter. Claimant had a “lot on my hands” and she was not paying attention to the filing of the requests to reopen. Audio at ~26:00.

(5) On August 31, 2017, claimant filed requests to reopen the hearing underlying Hearing Decisions 17-UI-73730 and 17-UI-73732. Although claimant did not find the time to file the requests to reopen earlier, she “probably could’ve, to be honest.” Audio at ~28:20.

**CONCLUSION AND REASONS:** Claimant’s requests to reopen are denied.

ORS 657.270(5) provides that any party who failed to appear at a hearing may request to reopen the hearing, and the request will be allowed if it was filed within 20 days of the date the hearing decision was issued and shows good cause for failing to appear. OAR 471-040-0041(1) (February 10, 2012) provides that the period within which a party may request reopening may be extended if the requesting party had good cause for failing to request the reopening within the time allowed and acts within a reasonable time. “Good cause” exists when the requesting party’s failure to timely file the request to reopen arose from an excusable mistake or from factors beyond the party’s reasonable control. OAR 471-040-0041(2). A “reasonable time” is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-040-0041(3).

As of March 16, 2017, at the latest, claimant was, by her own testimony, on notice from her telephone call to OAH that she needed to file requests to reopen the December 28, 2016 hearings underlying Hearing Decisions 17-UI-73730 and 17-UI-73732 if she wanted to challenge those decisions. While claimant may have had other legal proceedings to which to attend, been attending school and was working and providing care for her daughter after March 16, 2017, none of these, as described by claimant, constituted factors or circumstances beyond claimant's reasonable control that prevented her from filing both requests to reopen within seven days of her telephone conversation with the OAH representative. There is no persuasive evidence in the record that, after claimant was on notice of the need to file requests to reopen, some or all of these circumstances she cited could have reasonably prevented her from filing the requests to reopen until August 31, 2017. Indeed, claimant candidly stated she "probably could've" filed the requests to reopen much earlier than August 31, 2017. Audio at ~28:20. As well, claimant did not contend or suggest that any mistake, excusable or not, prevented her from filing the requests to reopen far more promptly than on August 31, 2017. On this record, it appears most likely that claimant did not file the requests to reopen before August 31, 2017, not because she was unaware of the need, but, most likely, due to a failure to attend and adhere to requirements and deadlines of which she was aware or reasonably should have been aware from what was plainly stated in the hearing decisions she received and contacts she had with OAH. Claimant did not show good cause for allowing her late requests to reopen the hearings. Accordingly, claimant's requests to reopen are denied.

**DECISION:** Hearing Decisions 17-UI-93124 and 17-UI-93126 are affirmed.

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

**DATE of Service:** November 6, 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](http://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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