

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1218**

*Late Applications for Review Dismissed*

**PROCEDURAL HISTORY:** On May 2, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 100155). On May 3, 2017, the Department served notice of administrative decision assessing a \$5,514 overpayment, an \$827.10 monetary penalty and 39 penalty weeks based on decision # 100155 (decision # 200256). Claimant filed timely requests for hearing on both administrative decisions. On July 20, 2017, the Office of Administrative Hearings (OAH) mailed two notices of hearing, one scheduling the hearing on decision # 100155 for 2:30 p.m. on August 3, 2017 and the other scheduling the hearing on decision # 200256 for 3:30 p.m. on August 3, 2017, at both of which claimant failed to appear. On August 3, 2017, ALJ Meerdink issued Hearing Decision 17-UI-89607, dismissing claimant's request for hearing on decision # 100155 due to claimant's failure to appear, and on August 4, 2017 issued Hearing Decision 17-UI-89661, dismissing claimant's request for hearing on decision # 200256 due to claimant's failure to appear. On August 7, 2017, claimant filed a request to reopen both hearings. On August 30, 2017, ALJ Lohr conducted two hearings on claimant's requests to reopen, and on August 31, 2017 issued two hearing decisions, the first denying claimant's request to reopen the hearing on decision # 100155 (Hearing Decision 17-UI-91630) and the second denying claimant's request to reopen the hearing on decision # 200256 (Hearing Decision 17-UI-81629). Both hearing decisions stated that to be timely applications for review of those decisions by the Employment Appeals Board (EAB) needed to be filed on or before September 20, 2017. On October 17, 2017, claimant filed late applications for review of Hearing Decisions 17-UI-91629 and 17-UI-91630 and with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-91629 and 17-UI-91630. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-1218 and 2017-EAB-1219).

**CONCLUSIONS AND REASONS:** Claimant's late applications for review of Hearing Decisions 17-UI-91629 and 17-UI-91630 are dismissed.

An application for review is timely if it is filed within 20 days of the date that OAH mailed the decision for which review is sought. OAR 471-041-0070(1) (March 20, 2014). The 20 day filing period may be extended a "reasonable time" upon a showing of "good cause." OAR 471-041-0070(2). "Good cause"

means that factors or circumstances beyond the applicant's reasonable control prevented timely filing OAR 471-040-0070(2)(a). A "reasonable time" is seven days after the circumstances that prevented the timely filing ceased to exist. OAR 471-041-0050(2)(b).

In the written statement that claimant submitted along with his late application for review of Hearing Decisions 17-UI 91629 and 17-UI-91630, claimant contended that although he was "in rehab from 8-31-17 to 9-26-17," he was checking his mail weekly and, apparently sometime after he was discharged from rehabilitation, he sent the application for review "to the address on the form, [but] the office says they have no record of it." It appears from date's interlineated in handwriting on the application for review, however, that claimant first dated it on September 28, 2017 and then dated it again on October 16, 2017. We presume that claimant wrote in the later date the day before he deposited the application for review in the mail, since the envelope in which it was delivered to EAB was postmarked on October 17, 2017.

Claimant did not indicate in his written statement when first received and read Hearing Decisions 17-UI-91629 and 17-UI-91630 and reasonably should have been aware that he needed to file applications for review on or before September 20, 2017 if he disagreed with the conclusions reached in either.

Assuming claimant first unsuccessfully mailed the application for review to the "office" shortly after he first dated it on September 28, 2017, he offered no explanation for why he completed and mailed it eight days after the September 20, 2017 deadline set forth in both hearing decisions. While claimant alluded to being in rehabilitation until September 26, 2017, he did not state that it was on an inpatient basis and, since he further stated that he was checking his mail weekly, apparently before and around the time the hearing decisions were delivered to him, it does not appear that being in rehabilitation should have impeded him from receiving the hearing decisions shortly after they were issued and timely filing applications for review of them. In addition, given that claimant previously had filed time-limited requests for hearing on both decisions # 100155 and # 200256 and had previously run afoul of scheduling requirements in the proceedings arising from those decisions, which led to his need to file requests to reopen, he reasonably was on notice of the importance of complying with deadlines in unemployment benefit proceedings. As well, claimant attended the August 30, 2017 hearings and should reasonably have been expecting the issuance of both hearing decisions shortly thereafter, and should have reasonably foreseen that there would be time limitations for seeking review of those decisions, as there had been for filing his requests for hearing on the administrative decisions. As such, to the extent claimant's participation in rehabilitation might otherwise have been an impediment to complying with the time limitations for the filing of the applications for review, he reasonably should have made arrangements to monitor his mail himself or to have someone else monitor and deliver it to him, which would have allowed him to timely receive both hearing decisions and thereafter to timely file applications for review; in the absence of an explanation why doing so would have been a factor or circumstance beyond his reasonable control, claimant did not show good cause for failing to file timely file the applications for review of Hearing Decision 17-UI-91629 and 17-UI-91630. Claimant's late-filed applications for review of both hearing decisions are dismissed.

**DECISION:** The applications for review filed October 17, 2017 are dismissed. Hearing Decisions 17-UI-91629 and 17-UI-91630 remain undisturbed.

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

**DATE of Service: October 24, 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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