

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1229

Affirmed
Late Request for Hearing Denied

PROCEDURAL HISTORY: On August 25, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not able to work from July 30, 2017 to August 5, 2017 (decision # 84313). On September 14, 2017, decision # 84313 became final without claimant having filed a timely request for hearing. On September 27, 2017, claimant filed a late request for hearing by telephone. On October 2, 2017, ALJ Kangas issued Hearing Decision 17-UI-93620, dismissing claimant's late request for hearing subject to her right to renew the request by responding to an appellant questionnaire by October 16, 2017. On October 17, 2017, claimant filed a late response to the appellant questionnaire with the Office of Administrative Hearings (OAH) and a timely application for review with the Employment Appeals Board (EAB). On October 23, 2017, ALJ Kangas mailed a letter stating that OAH would not consider claimant's appellant questionnaire because it was filed after the response deadline had passed.

With her application for review, claimant submitted the appellant questionnaire response she had offered into evidence at OAH, which is new information because claimant had offered it into evidence at OAH and OAH refused to consider it. EAB may consider new information if it is relevant and material to EAB's determination and the party offering the information demonstrates that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. OAR 471-040-0090 (October 29, 2006). The ALJ's refusal to consider claimant's appellant questionnaire was a circumstance beyond her reasonable control. Claimant's appellant questionnaire is therefore marked as EAB Exhibit 1 and admitted into the record. Any party who objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. Unless such objection is received and sustained, the noticed fact will remain in the record at EAB Exhibit 1.

FINDINGS OF FACT: Claimant did not file a timely request for hearing because the Department issued decisions both allowing and denying benefits for the same period and claimant was confused.

CONCLUSIONS AND REASONS: Claimant's late request for hearing is dismissed.

ORS 657.269 provides that parties have 20 days after issuance of the Department's decision to file a request for hearing. ORS 657.875 provides that the 20-day period may be extended "a reasonable time" upon a showing of "good cause." OAR 471-040-0040(1) defines "good cause" as an excusable mistake or factors beyond an applicant's reasonable control, such as failure to receive a document because the Department sent it to the wrong address despite having the correct one or unanticipated loss of telephone service during a telephone hearing. Not understanding the implications of a decision or notice when it is received is not good cause. OAR 471-040-0010(1)(b)(B). A "reasonable time" is seven days after the circumstances that caused the late filing ceased to exist. OAR 471-040-0010(3).

The circumstances under which claimant filed her request for hearing after the deadline expired were unfortunate, but did not establish good cause. On this record, we cannot conclude that filing a timely request for hearing was beyond claimant's reasonable control, and while not filing a timely request for hearing was probably due to a mistake of some sort it was not an excusable mistake because it did not, for example, raise a due process issue or result from inadequate notice, reasonable reliance on another, or the inability follow directions despite substantial efforts to comply. In the absence of a showing of good cause, the deadline for claimant's request for hearing in this case may not be extended, and her late request for hearing must be dismissed.

We note that even if we had concluded that claimant's confusion amounted to good cause because it was, in part, due to confusing consultations with Department employees about her claims for benefits, the outcome of this decision would remain the same because she did not establish that she filed her late request for hearing within the seven-day "reasonable time" period allowed. Specifically, claimant did not establish what date she finally realized that she needed to file a request for hearing on decision #84313, and did not establish that that date was within seven days of the date she ultimately filed her late request for hearing.

Claimant did not establish good cause to extend the filing period in this case, and did not establish that she filed her late request for hearing within a "reasonable time." Her late request for hearing therefore is denied, and Decision # 84313 remains undisturbed.

DECISION: Hearing Decision 17-UI-93620 is affirmed.

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

DATE of Service: November 15, 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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