

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1234

Affirmed
Request to Reopen Dismissed

PROCEDURAL HISTORY: On May 15, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant failed to accept suitable work when offered (decision # 112250). On May 18, 2017, claimant filed a timely request for hearing. On May 31, 2017, the Office of Administrative Hearings (OAH) mailed a notice of hearing regarding decision # 112250 scheduled for June 13, 2017 at 1:30 p.m. On June 13, 2017, claimant failed to appear at the scheduled hearing and ALJ Seideman issued Hearing Decision 17-UI-85583, dismissing claimant's hearing request for that reason. Hearing Decision 17-UI-85583 included information indicating that if a party failed to appear at the hearing, the party was permitted to request reopening of the hearing, provided, the request was filed within the time limits indicated and included information demonstrating why it was entitled to reopening.

On July 3, 2017, Hearing Decision 17-UI-85583 became final without claimant having requested that the hearing be reopened. On October 16, 2017, claimant filed a late request to reopen the June 13, 2017 hearing. ALJ Kangas reviewed claimant's request, and on October 19, 2017, issued Hearing Decision 17-UI-94964, denying claimant's late request to reopen. On October 26, 2017, claimant filed an application for review of Hearing Decision 17-UI-94964 with the Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant's late request 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 Seideman issued Hearing Decision 17-UI-85583 on June 13, 2017. Hearing Decision 17-UI-85583 included information indicating that a reopen request had to be filed within 20 days of that date to be timely or demonstrate good cause for filing a late request. Claimant filed his request to reopen on October 16, 2017, more than three months late. In his request to reopen, claimant explained that he failed to appear at the June 13, 2017 hearing because by that time he was employed and “did not think there would be any point in the hearing.” DR Exhibit 5. However, claimant did not include any additional information in his request to reopen about why he waited so long to file a request to reopen this matter. Therefore, claimant has not shown that he had good cause for failing to request reopening within the 20-day period following issuance of the decision dismissing his request for hearing for failure to appear, or that when he filed his request to reopen on October 16, 2017, that that date was within the 7-day “reasonable time” period after circumstances that prevented a timely filing ended. Absent any explanation, claimant has not shown that his late request was caused by “an excusable mistake or from factors beyond [his] reasonable control.” Accordingly, his request for reopening must be denied.

DECISION: Hearing Decision 17-UI-94964 is affirmed.

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

DATE of Service: October 27, 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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