

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1280

Affirmed
Late Request to Reopen Dismissed

PROCEDURAL HISTORY: On September 1, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was discharged not for misconduct within fifteen days of a planned quit without good cause (decision # 81354). Claimant filed a timely request for hearing. On September 18, 2015, the Office of Administrative Hearings (OAH) served notice of a hearing on decision # 81354 to the parties' addresses of record for September 29, 2015. On September 29, 2015, claimant failed to appear at the scheduled hearing, and ALJ Shoemake issued Hearing Decision 15-UI-45140 dismissing claimant's hearing request for that reason, and leaving decision # 81354 undisturbed. On October 20, 2015, Hearing Decision 15-UI-45140 became final without claimant having requested that the hearing be reopened. On October 10, 2017, claimant filed a late request to reopen the hearing. On October 19, 2017, ALJ Kangas issued Hearing Decision 17-UI-94986, denying claimant's request. On November 2, 2017, claimant filed an application for review of Hearing Decision 17-UI-94986 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 hearing 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 Shoemake issued Hearing Decision 15-UI-45140 on September 30, 2015. Hearing Decision 15-UI-45140 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 10, 2017, nearly two years late. Claimant recently filed a claim for unemployment insurance benefits, and learned that he had an overpayment resulting from decision # 81354 that would be deducted from his future benefits. Claimant's Written Argument to EAB. This prompted claimant to file a request to reopen the September 29, 2015 hearing regarding that decision. In his request to reopen, claimant explained that he did not receive notice of the September 29, 2015 hearing, the resulting Hearing Decision 15-UI-45140, or an overpayment notice. *Id.* OAH sent notice of the September 29, 2015 hearing, and the hearing decision, to claimant at his address of record at that time. Department records do not show a change of address for claimant until September 22, 2017.¹ Documents sent through the U.S. Postal Service are presumed to have been received by the addressee, subject to evidence to the contrary. OAR 137-003-0520(10) (January 31, 2012). Claimant offered no circumstantial evidence to support his assertion that the notice of hearing and hearing decision, though mailed to claimant at his address of record, were not delivered. Moreover, claimant filed a request for hearing, and did not explain why he did not inquire with the Department about his hearing if he never received notice of a hearing after requesting one. Claimant's bare assertion of non-receipt is insufficient to overcome the presumption of receipt, and therefore does not show good cause for failing to request reopening within the time allowed. Claimant's request to reopen is, therefore, denied on this basis.

DECISION: Hearing Decision 17-UI-94986 is affirmed.

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

DATE of Service: November 8, 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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¹ We take notice of this fact from Employment Department records. Any party that 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. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.