

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1395

Applications for Review Dismissed

PROCEDURAL HISTORY: On September 29, 2016, the Oregon Employment Department (the Department) served two notices of two administrative decisions, one concluding claimant failed without good cause to accept an offer of work on October 6, 2015 (decision # 64051) and the other concluding claimant was not available for work from October 11, 2015 to October 17, 2015 (decision # 82320). On October 19, 2016, decisions # 64051 and 82320 became final without claimant having filed timely requests for hearing. On October 28, 2016, the Department served notice of a third administrative decision assessing a \$4,351 overpayment, \$652.65 monetary penalty and 32 penalty weeks (decision # 193550). On November 2, 2016, claimant filed late requests for hearing on decision # 64051 and 82320 and a timely request for hearing on decision # 193550. On January 13, 2017, the Office of Administrative Hearings (OAH) mailed three notices of three hearings scheduled for February 3, 2017 at 1:30 p.m., 2:30 p.m., and 3:30 p.m., each of which claimant failed to attend. On February 6, 2017, ALJ Wyatt issued Hearing Decision 17-UI-76298, dismissing claimant's request for hearing on decision # 64051 for failure to appear, Hearing Decision 17-UI-76295, dismissing claimant's request for hearing on decision # 82320 for failure to appear, and Hearing Decision 17-UI-76300, dismissing claimant's request for hearing on decision # 193550 for failure to appear. On February 27, 2017, Hearing Decisions 17-UI-76298, 17-UI-76295, 17-UI-76300 became final without claimant having filed timely requests to reopen the hearings. On August 3, 2017, claimant filed late requests to reopen all three hearings. On September 13, 2017, OAH mailed three notices of three hearings scheduled for September 27, 2017 at 8:15 a.m., 9:30 a.m. and 10:45 a.m. On September 27, 2017, ALJ Murdock conducted three hearings, and on September 19, 2017 issued Hearing Decision 17-UI-93564, denying claimant's request to reopen the hearing on decision # 64051, Hearing Decision 17-UI-93563, denying claimant's request to reopen the hearing on decision # 193550, and Hearing Decision 17-UI-93566, denying claimant's request to reopen the hearing on decision # 82320. On October 19, 2017, Hearing Decisions 17-UI-93563, 17-UI-93564 and 17-UI-93566 became final without claimant having filed timely applications for review. On December 5, 2017, claimant filed late applications for review of all three decisions with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-93563, 17-UI-93564 and 17-UI-93566. For case-tracking purposes, this decision is being issued in triplicate (EAB Decisions 2017-EAB-1394, 2017-EAB-1395 and 2017-EAB-1396).

CONCLUSIONS AND REASONS: Claimant did not establish good cause to file late applications for review, and his late applications for review should be dismissed.

ORS 657.270(6) required claimant's applications for review to be filed no later than October 19, 2017; they were filed on December 5, 2017 by fax. OAR 471-041-0065 (October 29, 2006). OAR 471-041-0070 (October 29, 2006) provides:

(1) An application for review is timely if it is filed within 20 days of the date that OAH mailed the hearing decision sought to be reviewed. EAB shall dismiss a late application for review, unless the filing period is extended in accordance with this rule.

(2) The filing period may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875.

(a) "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing.

(b) "A reasonable time" is seven days after the circumstances that prevented timely filing ceased to exist.

With his late applications for review, claimant submitted a statement that said "These documents are sent late due to them seemingly not going through the day I [illegible]. The initial date sent is on the documents." Claimant dated the applications for review "10/10/17," and applications for review filed on that date would have been timely. Nevertheless, claimant's statement does not establish good cause under the stated rule because he did not provide any details about how he attempted to file the applications on October 10th, such as what he did, why he thought he had successfully filed them and why he thinks his attempt was not successful. Claimant's statement also did not establish that he filed the late applications for review within a reasonable time because he did not explain what date he found out that he had not successfully filed his applications on October 10th or that the date he filed his late applications, December 5th, was within seven days of that date.

Because the applications for review were filed after the 20-day deadline provided by ORS 657.270(6), and good cause to extend the time allowed a reasonable time has not been shown, the applications for review must be dismissed.

DECISION: The applications for review filed December 5, 2017 are dismissed. Hearing Decisions 17-UI-93563, 17-UI-93564 and 17-UI-93566 remain undisturbed.

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

DATE of Service: December 7, 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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