

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1433-R

Affirmed

EAB Decision 2017-EAB-1433 Adhered to on Reconsideration

PROCEDURAL HISTORY: On August 16, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause and was overpaid \$3540 in benefits (decision # 142702). On September 5, 2017, decision # 142702 became final without claimant having filed a request for hearing. On October 16, 2017, claimant filed a late request for hearing. On October 23, 2017, ALJ Kangas issued Hearing Decision 17-UI-95115, dismissing claimant's request for hearing subject to his right to renew the request by filing a response to an appellant questionnaire by November 6, 2017. Claimant filed a timely response to the appellant questionnaire. On November 9, 2017, the Office of Administrative Hearings (OAH) cancelled and vacated Hearing Decision 17-UI-95115, and on November 20, 2017 scheduled a hearing for December 5, 2017. On December 5, 2017, ALJ Meerdink conducted a hearing and issued Hearing Decision 17-UI-98280, re-dismissing claimant's request for hearing as untimely without good cause. On December 12, 2017, claimant filed an application for review of Hearing Decision 17-UI-98280 with the Employment Appeals Board (EAB).

On December 21, 2017, EAB issued EAB Decision 2017-EAB-1433, affirming and adopting Hearing Decision 17-UI-98280. On December 28, 2017, EAB received a timely written argument from claimant, which he mailed on December 26, 2017, apparently before he received and reviewed EAB Decision 2017-EAB-1433. This decision is issued to reconsider EAB Decision 2017-EAB-1433 in light of claimant's timely written argument, pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: EAB Decision 2017-EAB-1433, which affirmed and adopted Hearing Decision 17-UI-98280's dismissal of claimant's late request for hearing on decision # 142702, is adhered to on reconsideration.

In his written argument, claimant asked, as he essentially in his response to the appellant questionnaire and at hearing, for the following to be considered: that he had "spoken with many Employment people about this case," including three Department employees, the ALJ, "and now a different EAB person to make a decision;" that "nothing was ever done on [his] part to make any of this mess;" that no overpayment was made, [he] was unemployed;" and that "a miss communication [sic] was made and

that is all.” However, the only issue before EAB is whether claimant’s request for hearing on decision # 142702 is subject to dismissal as untimely without a showing of good cause. To the extent, if any, claimant’s written argument is relevant to that issue, it nevertheless fails to show that his failure to file a timely request for hearing was due to an excusable mistake or factors beyond his reasonable control. Claimant therefore failed to establish good cause for filing a late request for hearing, which therefore is subject to dismissal.

DECISION: EAB Decision 2017-EAB-1433 adhered to on reconsideration. Claimant’s late request for hearing on administrative decision # 142702 is dismissed. Decision # 142702 remains undisturbed.

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

DATE of Service: January 5, 2018

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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