

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1447

Affirmed
Request for Hearing Dismissed

PROCEDURAL HISTORY: On June 30, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant willfully made a misrepresentation and failed to report a material fact, assessing a \$903 overpayment and a \$225.75 monetary penalty, and disqualifying claimant for 9 weeks of future benefits (decision # 193373). On July 20, 2017, decision # 193373 became final without claimant having filed a timely request for hearing. On November 16, 2017, claimant filed a late request for hearing. On November 22, 2017, ALJ Kangas issued Hearing Decision 17-UI-97550, dismissing claimant's request as untimely without a showing of good cause, subject to claimant's right to renew the request by filing a response to an appellant questionnaire by December 6, 2017. On December 11, 2017, claimant filed a late response to the appellant questionnaire and a timely application for review of Hearing Decision 17-UI-97550.

Claimant's filing of her response to the appellant questionnaire with her application for review is construed as a request for EAB to consider information not received into the hearing record. Under OAR 471-041-0090(1) (October 29, 2016), information offered, but not received into the hearing record, may be received into evidence as necessary to complete the record. Claimant's response to the appellant questionnaire is necessary to complete the record, and EAB therefore considered her response when reaching this decision. Claimant's response to the appellant questionnaire has been marked as EAB Exhibit 1, and a copy of EAB Exhibit 1 is included with this decision. Any party that objects to the admission of EAB Exhibit 1 must submit its objection in writing to EAB within 10 days of the date on which this decision was mailed. If no objection is received, or an objection is received and overruled, EAB Exhibit 1 will remain part of the record.

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

ORS 657.269 provides that the Department's decisions become final unless a party files a request for hearing within 20 days after the date it is mailed. ORS 657.875 provides that the 20-day deadline may be extended a "reasonable time" upon a showing of "good cause." OAR 471-040-0010 (February 10, 2012) provides that "good cause" includes factors beyond an applicant's reasonable control or an

excusable mistake, and defines “reasonable time” as seven days after those factors ceased to exist. Good cause does not include failing to understand the implications of a decision or notice when it is received. OAR 471-040-0010(1)(b)(B).

Here, claimant filed a request for hearing on decision # 193373 on November 16, 2017, more than 20 days after the decision was mailed. In her response to the appellant questionnaire, claimant stated that she was “not sure” when she received decision # 193373, “not sure” when she filed her request for hearing, and “not sure” if she filed her request before the filing deadline. EAB Exhibit 1. She further stated that if she did not file her request before the deadline it was due to “Too many life decisions,” and because she was “confused.” EAB Exhibit 1. She further stated that she could have “Talked to appeal to determine how to proceed” to meet the deadline, and filed her request for hearing when she did “To give my right to be heard.” EAB Exhibit 1. Finally, claimant stated that she believed she had good cause for filing her hearing request late “Due to circumstances in my life I felt I would appeal at this time.” EAB Exhibit 1.

Claimant’s response to the appellant questionnaire fails to show that she filed a timely request for hearing on decision # 193373 before the late request she filed on November 16, 2017. Nor does her response show her late filing was due to factors beyond her reasonable control, or an excusable mistake raising a due process issue or resulting from inadequate notice, reasonable reliance on another or the inability to follow direction despite substantial efforts to comply. Nor does it show that she filed her request for hearing within seven days after any factors that that caused her late filing ceased to exist. Absent such showings, claimant failed to establish good cause for filing her late request for hearing on decision # 193373, or that she filed her request within a reasonable time.

Claimant’s request for hearing therefore is dismissed.

DECISION: Hearing Decision 17-UI-97550 is affirmed.

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

DATE of Service: December 21, 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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