

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0001

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On September 22, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 134847). On October 12, 2017, decision # 134847 became final without claimant having filed a request for hearing. On December 4, 2017, claimant filed a late request for hearing. On December 7, 2017, ALJ Kangas issued Hearing Decision 17-UI-98445, dismissing claimant's request for hearing subject to her right to renew her request by responding to an appellant questionnaire by December 21, 2017. Claimant filed a timely response to the appellant questionnaire. ALJ Kangas reviewed claimant's response, and on December 20, 2017 issued Hearing Decision 17-UI-99438, re-dismissing claimant's late request for hearing. On December 28, 2017, claimant filed a timely application for review of Hearing Decision 17-UI-99438 with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument to the extent it was relevant to the only issue before EAB, whether claimant's request for hearing on decision # 134847 is subject to dismissal.

FINDING OF FACT: The Department mailed the September 22, 2017 notice of decision # 134847 to claimant's correct address. However, the United States Postal Service (USPS) failed to deliver the notice. On November 20, 2017, the Department informed claimant that decision # 134847 had been issued, and again mailed notice of the decision to claimant's correct address. Claimant received the notice on or before Saturday, November 25, 2017 but did not request a hearing on decision # 134847 until December 4, 2017.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 134847 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.

Here, claimant failed to file a timely request for hearing on decision # 134847 because the USPS failed to deliver the September 22, 2017 notice of the decision. The USPS’s failure to deliver the notice was beyond claimant’s reasonable control, and therefore constitutes good cause for her failure to file a timely request for hearing. On November 20, 2017, however, the Department informed claimant that decision # 134847 had been issued, and again mailed notice of the decision to her correct address. Claimant received the notice on or before Saturday, November 25, 2017. However, she did not request a hearing on decision # 134847 until December 4, 2017, 14 days after she became aware of the decision and at least 9 days after she received notice of the decision in the mail. Claimant therefore did not file her request for hearing within the seven-day “reasonable time” period as defined under OAR 471-040-0010. Her request for hearing therefore must be dismissed.

DECISION: Hearing Decision 17-UI-99438 is affirmed.

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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