

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0032

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On October 20, 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 # 154517). On November 9, 2017, decision # 154517 became final without claimant having filed a request for hearing. On December 13, 2017, claimant filed a late request for hearing. On December 18, 2017, ALJ Kangas issued Hearing Decision 17-UI-99223, dismissing claimant's request for hearing as untimely without a showing of good cause, subject to his right to renew the request by responding to an appellant questionnaire by January 2, 2018. On January 6, 2018, claimant filed a late response to the appellant questionnaire and a timely application for review of Hearing Decision 17-UI-99223 by the Employment Appeals Board (EAB). On January 9, 2018, ALJ Kangas notified claimant that because his response to the appellant questionnaire was late, OAH would not consider it or issue another order regarding this matter, and that Hearing Decision 17-UI-99223 therefore remained in effect.

With his application for review, claimant submitted a partial response to the appellant questionnaire and other documents. 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 documents are necessary to complete the record, and therefore are received into evidence as EAB Exhibit 1. Any party that objects to the admission of EAB Exhibit 1 into the record 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. Unless such objection is received and sustained, the exhibit will remain in the record.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 154517 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).

In his partial response the appellant questionnaire, claimant stated that he did not file a timely request for hearing on decision # 154517 because he “was sick!”, and he believed he had good cause for filing his request for hearing late because he “was sick & trying to take [care] of kids.” EAB Exhibit 1. Claimant further asserted that he filed his request for hearing on December 13, 2017 because “They never contacted me or return[ed] any phone calls. email – nothing.” EAB Exhibit 1.

With his response, claimant provided documents showing that he was ill on January 25, 2017 and off work for 10 days, that he was ill on February 16, 2017 and off work for 2 weeks, that he was ill on March 7, 2017 and off work for two weeks, and that he was in treatment and attended three therapy sessions from February 17, 2017 through July 13, 2017. EAB Exhibit 1. However, decision # 154517 was not issued until October 20, 2017. Claimant’s assertion that he did not file a timely request for hearing on that decision because he was sick and taking care of kids is not sufficient to show that those circumstances prevented him from filing a timely request for hearing. Nor does claimant’s explanation for filing his request for hearing on December 13, 2017 show that he filed his request within the seven-day “reasonable time” period after any circumstances that prevented timely filing ceased to exist. Claimant therefore failed to establish good cause to extend the filing period to December 13, 2017. His late request for hearing on decision # 154517 therefore is dismissed.

DECISION: Hearing Decision 17-UI-99223 is affirmed.

D. P. Hettle and S. Alba;
J. S. Cromwell, not participating.

DATE of Service: January 25, 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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