

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0044

Hearing Decision 17-UI-97264 ~ Application for Review Dismissed
Hearing Decision 17-UI-99897 ~ Affirmed

PROCEDURAL HISTORY: On October 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 153759). On November 8, 2017, the Department served notice of a second administrative decision (the registration decision) concluding that claimant failed to register for work and was not eligible for benefits from October 15, 2017 to October 21, 2017.

On November 13, 2017, decision # 153759 became final without claimant having filed a timely request for hearing. On November 14, 2017, claimant filed a late request for hearing on decision # 153759 and a timely request for hearing on the registration decision.

On November 20, 2017, ALJ Kangas issued Hearing Decision 17-UI-97264, dismissing claimant's late request for hearing on decision # 153759 subject to his right to renew the request by responding to an appellant questionnaire by December 4, 2017. On November 29, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing on the registration decision scheduled for December 13, 2017 at 1:30 p.m.

Claimant did not respond to the appellant questionnaire by December 4, 2017. On December 11, 2017, Hearing Decision 17-UI-97264, dismissing claimant's late request for hearing on decision # 153759, became final without claimant having filed a timely application for review with the Employment Appeals Board (EAB).

On December 13, 2017, claimant failed to appear at the hearing on the registration decision, and, the same day, ALJ Janzen issued Hearing Decision 17-UI-98927, dismissing claimant's request for hearing on the registration decision for failure to appear. On December 21, 2017, claimant filed a timely request to reopen the December 13, 2017 hearing. On December 28, 2017, ALJ Kangas considered claimant's request and issued Hearing Decision 17-UI-99897, denying claimant's request to reopen.

On January 12, 2018, claimant filed a timely application for review of Hearing Decision 17-UI-99897, and a late application for review of Hearing Decision 17-UI-97264, with EAB.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 17-UI-97264 and 17-UI-99897. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2017-EAB-0043 and 2017-EAB-0044).

FINDINGS OF FACT: (1) Claimant received the notice of hearing scheduling the December 13th hearing and intended to appear at it. After receiving notice of that hearing, claimant learned that another hearing he had scheduled the following day in another matter was canceled. Claimant became confused over which hearing on which date had been canceled. He did not attend the December 13th hearing in this matter, but tried to call to participate in it the following day and eventually learned that he had missed the hearing, and that his hearing request had been dismissed. He filed a timely request to reopen the hearing.

(2) Claimant was confused about his unemployment insurance claim because there were separate decisions and hearings. He called the hearing office asking for clarification but remained confused and felt that the representative he spoke with would not tell him anything. Claimant received Hearing Decision 17-UI-97264 on approximately January 3, 2018. On January 12, 2018, he responded to it by faxing his questionnaire and an application for review form to EAB.

CONCLUSIONS AND REASONS: Claimant's late application for review of Hearing Decision 17-UI-97264 should be dismissed. We agree with Hearing Decision 17-UI-99897 that claimant's request to reopen should be denied.

Late Application for Review. ORS 657.270(6) provides that parties have 20 days after issuance of a hearing decision to file a timely application for review. ORS 657.875 allows that time period to be extended "a reasonable time" upon a showing of "good cause." "A reasonable time" is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-041-0070(2).

Based upon claimant's questionnaire response it appears more likely than not that claimant did not receive a copy of Hearing Decision 17-UI-97264, which dismissed his late request for hearing on decision # 153759, until approximately January 3, 2018. Regardless whether claimant's late receipt of the hearing decision amounted to good cause to extend the filing period, the filing period may only be extended seven days after the date the circumstances that prevented a timely filing ceased to exist. In this case, the circumstances that prevented a timely filing ceased to exist on January 3, 2018 when claimant received Hearing Decision 17-UI-97264. The seven-day "reasonable time" period therefore ran from January 3rd until January 10th; however, claimant did not file his late application for review until 2 days after the "reasonable time" period ended, on January 12th. Claimant's late application for review was, therefore, not filed within the seven-day "reasonable time" period, and his late application must be dismissed.

Request to Reopen. Any party who fails to appear at a hearing may request that the hearing be reopened. ORS 657.270(5). The request may be allowed if, among other things, the party requesting reopening shows "good cause" for failing to appear. ORS 657.270(5)(c)(C). "Good cause" means an excusable mistake or factors beyond the party's reasonable control. OAR 471-040-0040(2).

Claimant failed to appear at the December 13th hearing because he was confused about the dates after another hearing scheduled in a different jurisdiction the following day was canceled. Claimant's confusion did not amount to "good cause." Keeping track of important hearing dates is generally the type of thing that is considered to be within a party's reasonable ability to control. Although claimant's failure to keep track of the hearing dates was likely due to a mistake on his part, it was not an "excusable mistake" within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Because claimant's failure to appear at the hearing was not due to an excusable mistake or factors beyond his reasonable control, he did not establish good cause to reopen the hearing, and his request must be denied.

DECISION: The application for review of Hearing Decision 17-UI-97264 filed January 12, 2018 is dismissed; Hearing Decision 17-UI-97264 remains undisturbed. Hearing Decision 17-UI-99897 is affirmed.

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

DATE of Service: January 18, 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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