

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0155

Applications for Review Dismissed

PROCEDURAL HISTORY: On February 16, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from November 22, 2015 to February 6, 2016 (decision # 85822). On March 7, 2016, decision # 85822 became final without claimant having filed a timely request for hearing. On March 18, 2016, the Department served notice of another administrative decision, based upon decision # 85822, assessing a \$1,197 overpayment that claimant was liable to repay (decision # 135945). On March 21, 2016, claimant filed a timely request for hearing on decision # 135945 and a late request for hearing on decision # 85822. On March 29, 2016, the Office of Administrative Hearings (OAH) mailed two notices of two hearings, one on April 12, 2016 at 1:30 p.m. regarding claimant's late request for hearing on decision # 85822, and the other on April 12, 2016 at 2:30 p.m. regarding decision # 135945. Claimant failed to appear at both hearings, and on April 12, 2016, ALJ M. Davis issued two decisions dismissing claimant's requests for hearing for failure to appear. Hearing Decision 16-UI-57094 dismissed claimant's late request for hearing on decision # 85822, and Hearing Decision 16-UI-57095 dismissed claimant's request for hearing on decision # 135945. On May 9, 2016, claimant filed late requests to reopen both hearings. On May 19, 2016, ALJ Kangas considered claimant's requests and issued Hearing Decision 16-UI-59970, denying claimant's request to reopen the hearing on decision # 85822, and Hearing Decision 16-UI-59974, denying claimant's request to reopen the hearing on decision # 135945. On June 8, 2016, Hearing Decisions 16-UI-59970 and 16-UI-59974 became final without claimant having filed timely applications for review with the Employment Appeals Board (EAB). On February 12, 2018, claimant filed late applications for review of Hearing Decisions 16-UI-59970 and 16-UI-59974 with EAB. EAB considered claimant's argument when reaching this decision.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 16-UI-59970 and 16-UI-59974. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0155 and 2018-EAB-0156).

CONCLUSIONS AND REASONS: Claimant's late applications for review of Hearing Decisions 16-UI-59970 and 16-UI-59974 should be dismissed.

ORS 657.270(6) provides that a hearing decision becomes final 20 days after mailing unless a party files an application for review of the hearing decision with EAB. ORS 657.875 provides that the 20-day deadline may be extended “a reasonable time” upon a showing of “good cause.” OAR 471-041-0070(2) (February 18, 2012) defines “good cause” as factors or circumstances beyond the party’s reasonable control that prevented a timely filing, and defines “a reasonable time” as seven days after the circumstances that prevented a timely filing ceased to exist. Parties are required to include with a late application for review “a written statement describing the circumstances that prevented a timely filing.” OAR 471-041-0070(3).

With claimant’s applications for review he included a written statement in which he explained that he was unable to appear for his hearings in 2016, described his family’s circumstances around that time, his travel out of the country, and why he felt he should be considered “available to work” despite his lack of car during the weeks at issue. Claimant also acknowledged that “it has been almost a year from when this hearing happened and have passed the 20-day appeal date,” but he did not explain *why* the circumstances he described prevented him from filing a timely application for review in these cases, why he waited from May 2016 until February 2018 – almost two years – after the hearing decisions denying his reopen requests were issued to file his late applications for review of those decisions, how his family’s circumstances in Mexico prevented him from filing timely applications for review, what date those circumstances abated sufficiently that he could file late applications for review, or that he filed his late applications for review within seven days of that date. Absent that information, claimant has neither shown that he had good cause to extend the filing periods in these cases, or that his late application for review filings on February 12, 2018 occurred within the 7-day “reasonable time” period after the circumstances that prevented timely filings ceased to exist. Claimant’s late applications for review must, therefore, be dismissed.

DECISION: The applications for review filed February 12, 2018 are dismissed. Hearing Decisions 16-UI-59970 and 16-UI-59974 remain undisturbed.

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

DATE of Service: February 16, 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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