

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0162

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY AND FINDINGS OF FACT: On November 8, 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 # 145838). On November 28, 2017, decision # 145838 became final without claimant having filed a request for hearing. On January 17, 2018, claimant filed a late request for hearing. On January 22, 2018, ALJ Kangas issued Hearing Decision 18-UI-101361, dismissing claimant's request for hearing as untimely without a showing of good cause, subject to claimant's right to renew her request by filing a response to an appellant questionnaire by February 5, 2018. On February 7, 2018, claimant filed a late response to the appellant questionnaire. On February 12, 2018, ALJ Kangas issued a letter stating that because claimant filed her response to the appellant questionnaire late, the response would not be considered, another order would not be issued, and Hearing Decision 18-UI-101361 remained in effect. On February 12, 2018, Hearing Decision 18-UI-101361 became final without claimant having filed an application for review by the Employment Appeals Board (EAB). On February 14, 2017, claimant filed a timely application for review of ALJ Kangas' February 12, 2018 letter.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 145838 is dismissed.

As a preliminary matter, we note that claimant's application for review was filed two days after ALJ Kangas issued the letter, which claimant included with her application for review, stating that because claimant filed her response to the appellant questionnaire attached to Hearing Decision 18-UI-101361 late, the response would not be considered, another order would not be issued, and Hearing Decision 18-UI-101361 remained in effect. We therefore construed claimant's filing as a timely application review of that decision by the ALJ, and not an application for review of Hearing Decision 18-UI-101361. We affirm the ALJ's decision, because Hearing Decision 18-UI-101361 dismissed claimant's late request for hearing subject to claimant's right to renew her request by filing a response to an appellant questionnaire by February 5, 2018, and claimant did not file her response until February 7, 2017. The ALJ therefore did not err in concluding that claimant's response would not be considered, declining to

issue another order, and allowing Hearing Decision 18-UI-101361 to remain in effect. Decision # 145838 therefore also remains in effect.

However, we also note that even if we construed claimant's filing as an application for review of Hearing Decision 18-UI-101361, the outcome would remain the same. An application for review is timely if it is filed within 20 days of the date that OAH mailed the decision for which review is sought. OAR 471-041-0070(1) (March 20, 2014). The 20 day filing period may be extended a "reasonable time" upon a showing of "good cause." OAR 471-041-0070(2). "Good cause" means that factors or circumstances beyond the applicant's reasonable control prevented timely filing. OAR 471-040-0070(2)(a). The applicant must include with the application for review a written statement describing the circumstances that prevented a timely filing. OAR 471-040-0070(3). Here, claimant filed her application for review 2 days after the filing deadline for Hearing Decision 18-UI-101361, did not include a written statement describing the circumstances that prevented a timely filing, and therefore failed to establish good cause to extend the filing deadline. Thus, even if we construed claimant's filing as an application for review of Hearing Decision 18-UI-101361, the application for review would be dismissed, and Hearing Decision 18-UI-101361 and Decision # 145838 therefore would remain in effect.

Finally, we note that even if we construed claimant's filing as a late application for review of Hearing Decision 18-UI-101361, allowed the application for review, and considered claimant's late response to the appellant questionnaire, the outcome still would remain the same. 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. An ALJ may dismiss a request for hearing if the requesting party fails to file the request for hearing within 20 days and fails to show good cause for the delay, and that the request was filed within a reasonable time. ORS 657.269(2), ORS 657.270(7)(a)(E), ORS 657.875. OAR 471-040-0010 (February 10, 2012) provides that "good cause" includes an excusable mistake or factors beyond an applicant's reasonable control, and defines "reasonable time" as seven days after those factors ceased to exist. Here, claimant filed her request for hearing on decision # 145838 over seven weeks late, provided no explanation for the delay, and therefore failed to show good cause to extend the filing deadline to January 17, 2018. Thus, even if we construed claimant's filing as a late application for review of Hearing Decision 18-UI-101361, allowed the application for review, and considered claimant's late response to the appellant questionnaire, Hearing Decision 18-UI-101361 would be affirmed, and Decision # 145838 therefore would remain in effect.

DECISION: Hearing Decision 18-UI-101361 is affirmed.

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

DATE of Service: February 26, 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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