

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0232

Affirmed

Late Request for Hearing on Administrative Decision # 200750 Dismissed

PROCEDURAL HISTORY: On September 7, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the U.S. Postal Service (the employer) without good cause (decision # 70147). On September 14, 2017, claimant filed a timely request for hearing on that decision. On September 26, 2017, the Office of Administrative Hearings (OAH) served notice of a hearing on decision # 70147 scheduled for October 10, 2017. On October 10, 2017, claimant failed to appear at the hearing, and ALJ Murdock issued Hearing Decision 17-UI-94245, dismissing claimant's request for hearing due to her failure to appear. On October 26, 2017, claimant filed a timely request to reopen the hearing. On December 12, 2017, ALJ Murdock conducted a hearing, and on December 19, 2017 issued Hearing Decision 17-UI-99367, granting claimant's request for a reopening and concluding that claimant quit working for the employer with good cause. On January 8, 2018, Hearing Decision 17-UI-99367 became final without an application for review with the Employment Appeals Board (EAB) having been filed.

On January 8, 2018, the Department served notice of the administrative decision at issue (decision # 200750), concluding that when claiming benefits, and to obtain benefits, claimant willfully failed to report quitting work for the employer, and therefore is disqualified for four weeks of future benefits. On January 22, 2018, the Department served notice of two administrative decisions, one concluding that claimant quit working for another employer, Fruithill Inc., without good cause (decision # 75613), and the other concluding that claimant is not eligible for benefits for the week ending January 20, 2018 (the eligibility decision). On January 23, 2018, the Department served notice of an administrative decision, based in part on decision # 75613 and the eligibility decision, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and therefore was overpaid benefits that she must repay, is disqualified for future benefits, and assessed a monetary penalty (decision # 200972).

On January 29, 2018, decision # 200750 became final without claimant having filed a request for hearing on that decision. On February 6, 2018, claimant filed the late request for hearing on decision # 200750 that is at issue in the case before EAB at this time, and also filed timely requests for hearing on

decisions # 75613 and 200972. On February 8, 2018, ALJ Kangas issued Hearing Decision 18-UI-102888, dismissing claimant's late request for hearing on decision # 200750 subject to her right to renew the request by responding to an appellant questionnaire by February 22, 2018. On February 14, 2018, claimant filed a timely response to the appellant questionnaire. ALJ Kangas reviewed claimant's response, and on February 21, 2018 issued Hearing Decision 18-UI-103644, re-dismissing claimant's request for hearing on decision # 200750 as untimely without good cause. On March 2, 2018, claimant filed a timely application for review of Hearing Decision 18-UI-103644 by EAB. On March 12, 2018, OAH served notice of hearings on decisions # 75613 and 200972 scheduled for March 30, 2018.

EAB considered the entire hearing record. Claimant submitted written argument with her application for review, asserting for the first time that she filed her late request for hearing on decision # 200750 late, in part, because, "I'm confused by all the paperwork received. It seems that I have several hearings and appeals going on at once. My disability appeared to interfere with the way I processed the paperwork I had sent and received." On March 14, 2018, claimant submitted additional new information, that claimant suffers from severe short term memory impairments, and that those cognitive difficulties have caused "missed deadlines." However, information not received into the hearing record before the ALJ will only be considered by EAB when the party offering the new information establishes that it is relevant and material to EAB's determination, and that factors or circumstances beyond the party's reasonable control prevented the party from offering the information into the hearing record. OAR 471-040-0090(2). (October 29, 2006).

EAB did not consider claimant's new information when reaching this decision, in part, because claimant did not assert or show that factors or circumstances beyond her reasonable control prevented her from offering her new information into the hearing record when responding to the appellant questionnaire attached to Hearing Decision Hearing Decision 18-UI-102888. Nor do we find claimant's new information material to EAB's determination of whether claimant had good cause for filing her request for hearing on decision # 200750 late. Although it is clear that the Department issued many decisions, which might well have seemed overwhelming, claimant filed timely requests for hearing on decisions # 70147, 75613 and 200972 and failed to show that her short term memory impairments prevented her from doing so on decision # 200750. The Department served notice of decision # 200750 twenty days after ALJ Murdock issued Hearing Decision 17-UI-99367 concluding that claimant quit working for the employer. Claimant had approximately two weeks to request a hearing on decision # 200750 before the Department served notice of the eligibility decision and decisions # 75613 and 200972, none of which related to claimant's work separation from the employer or decision # 200750. In other words, the subject matters of the decisions were sufficiently spaced and different that it does not appear that claimant would reasonably have mistaken the decision at issue for one on which she had already requested a hearing. Nor, under OAR 471-040-0010, would that sort of confusion amount to good cause for a late request for hearing. Thus, even if we had considered claimant's new information, the outcome of this decision would have remained the same.

On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 18-UI-103644 is affirmed.

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

DATE of Service: March 14, 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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