

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0285-R

Affirmed on Reconsideration
Late Request to Reopen Denied
Disqualification

PROCEDURAL HISTORY: On December 7, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 143503). The employer filed a timely request for hearing. On December 21, 2017, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for January 4, 2018. On January 4, 2018, ALJ Logan conducted a hearing at which claimant failed to appear, and on January 5, 2018 issued Hearing Decision 18-UI-100357 concluding claimant's discharge was for misconduct. On January 25, 2018, Hearing Decision 18-UI-100357 became final without claimant having filed a timely application for review with the Employment Appeals Board (EAB). On January 31, 2018 and February 8, 2018, claimant filed with EAB and OAH a late application for review of Hearing Decision 18-UI-100357 and late request to reopen the January 4, 2018 hearing. On February 9, 2018, EAB issued Appeals Board Decision 2018-EAB-0103, reversing Hearing Decision 18-UI-100357 and remanding the matter to OAH for a hearing. On February 12, 2018, OAH mailed notice of a hearing scheduled for February 22, 2018. On February 22, 2018, ALJ Logan conducted a hearing, and on February 28, 2018 issued Hearing Decision 18-UI-104177, denying claimant's late request to reopen the hearing and concluding that claimant's discharge was for misconduct. On March 20, 2018, claimant filed a timely application for review with EAB. On March 27, 2018, EAB issued Appeals Board Decision 2018-EAB-0285, affirming Hearing Decision 18-UI-104177. On April 11, 2018, claimant filed a timely request for reconsideration. This decision is issued pursuant to EAB's authority under ORS 657.290(3).

CONCLUSIONS AND REASONS: Claimant's request for reconsideration is granted. We adhere to Appeals Board Decision 2018-EAB-0285 as clarified herein.

OAR 471-041-0145 provides that any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Department rules, officially stated positions, or prior practice. In his request for reconsideration, claimant asserted that EAB erred by issuing Appeals Board Decision 2018-EAB-0285 before the written argument deadline established in OAR 471-041-0080(1) expired. We agree that the decision was issued prematurely, and therefore grant reconsideration to reconsider this matter in light of claimant's written arguments.

The applicable law in this case includes ORS 657.270(5)(c)(B), which provides that a request to reopen may be allowed if it is filed "within 20 days after the issuance of the written decision by the administrative law judge." The 20-day period in this case expired on January 25, 2018 without claimant having requested reopening, making his request late. ORS 657.875 provides that the 20-day period may be extended "a reasonable time" upon a showing of "good cause." OAR 471-040-0041 defines "a reasonable time" as seven days after the circumstances that prevented a timely filing ceased to exist, and "good cause" as "an excusable mistake" or "factors beyond an applicant's reasonable control." "Good cause" does not include not understanding the implications of a decision or notice when it is received. OAR 471-040-0041(2).

In written argument, claimant and his attorney averred that claimant's late request to reopen the January 4th hearing on decision # 143503 should be allowed for two reasons: first, that much of claimant's mail was going to his prior address on his former employer's property and was not being forwarded to claimant after his discharge and eviction; and second, that claimant did not file a timely request to reopen the hearing because he reasonably, but mistakenly, had assumed that his worker's compensation attorney was handling his unemployment insurance claim. Claimant did not establish that he is entitled to extend the deadline for requesting reopening for those reasons.

Although we have no reason to doubt that much of claimant's mail might have been misdirected to his former address on the employer's property, from which he had been evicted, the record clearly establishes that all record documents in this case, including the administrative decision, notices of hearing and notices of the ALJ's Orders, were actually mailed to claimant at his Canby address of record. Therefore, misdirected mail was not a factor in claimant's receipt, or non-receipt, of the mail in this matter, and misdirected mail did not play a role in claimant's failure to file a timely request to reopen the January 4th hearing in this case. Although claimant alleged at the hearing that he was having difficulty receiving mail independent of his misdirected mail assertion, for the reasons explained in Order No. 18-UI-104177, we agree with the ALJ that claimant did not establish that it is more likely than not that the relevant mail in this case was not timely delivered to him at the Canby address of record to which it was directed. Claimant did not establish good cause for his late request to reopen the January 4th hearing due to misdirected mail or non-receipt of his mail.

Likewise, although we have no reason to doubt that claimant might mistakenly have assumed that his worker's compensation attorney was also handling his unemployment insurance claim, claimant's assumption was not reasonable on this record and did not establish good cause for his late request to reopen the January 4th hearing on decision # 143503. There is no dispute that, at all relevant times, claimant's worker's compensation attorney was not, in fact, representing claimant on his unemployment insurance claim. Nor, on this record, was claimant's assumption that he was reasonable, considering that claimant did not hire the attorney to represent him on the unemployment insurance case at the time of the events in question, Department records show that claimant is the individual who was in contact

with the Department about his unemployment insurance claim, and none of the mail or notices at issue in this case were addressed to the attorney or mentioned his name.¹ The fact that the attorney represented claimant in one matter pertaining to his employment did not, without some other basis for thinking the representation extended to another issue, give claimant a reasonable basis for his assumption that the attorney was representing him in the unemployment insurance matter, too.

Lastly, we note that claimant's attorney also argued that "it would be extremely unfair" for claimant "to be denied unemployment benefits for a procedural matter" given that he "did not have the opportunity to testify at his hearing." However, while the result of the denial might feel unfair to claimant, the denial of claimant's late request to reopen was not – the applicable statutes and rules establish a system of uniformly-enforced deadlines that all unemployment insurance claim parties must meet in order to preserve the right to testify at hearings in matters that affect them, and consistently defines the circumstances under which a party might be entitled to extend those deadlines a reasonable time by a showing of good cause. Having considered claimant's written arguments in this matter, and reconsidered the record developed at the hearings in this matter, we conclude that claimant did not establish good cause for filing a late request to reopen, and his request must be denied. On reconsideration, Order No. 18-UI-104177, as modified herein, is therefore readopted.

DECISION: On reconsideration, Order No. 18-UI-104177 is affirmed.

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

DATE of Service: May 9, 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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¹ We take notice that claimant, not his attorney, had personal contact with the Department about his claim at all relevant times, as demonstrated by Employment Department claim records. Any party that objects to our doing so 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. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.