

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0321

Affirmed ~ Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On August 15, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from July 16, 2017 to August 12, 2017 (decision # 74748). On September 5, 2017, decision # 74748 became final without claimant having filed a timely request for hearing. On October 5, 2017, the Department served notice of an administrative decision concluding that claimant did not actively seek work from September 10, 2017 to September 23, 2017 (decision # 73248). On October 25, 2017, decision # 73248 became final without claimant having filed a timely request for hearing. On March 9, 2018, claimant filed a late request for hearing on both decisions. On March 13, 2018, ALJ Kangas issued Hearing Decisions 18-UI-105060 and 18-UI-105061, dismissing claimant's late requests for hearing subject to claimant's right to renew the requests by responding to an appellant questionnaire by March 27, 2018. On March 28, 2018, claimant responded to the appellant questionnaires and filed timely applications for review of both decisions with the Employment Appeals Board (EAB). On April 4, 2018, ALJ Kangas issued letters to claimant stating that the responses to the appellant questionnaires were late and would not be considered.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Hearing Decisions 18-UI-105060 and 18-UI-105061. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0321 and 2018-EAB-0322).

With his application for review claimant submitted copies of the appellant questionnaire, which the ALJ declined to admit into evidence since they were submitted late. Under OAR 471-041-0090(1) (October 29, 2016), information offered, but not received into the hearing record, may be received into evidence as necessary to complete the record. Because the information on the questionnaires is necessary to complete the record, the questionnaires are hereby admitted into evidence as EAB Exhibit 1. 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. Unless such objection is received and sustained, EAB Exhibit 1 will remain in the record.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant's late requests for hearing should be dismissed.

ORS 657.269 provides that parties have 20 days after the date the Department mailed its decisions to file a timely request for hearing. ORS 657.875 provides that the 20-day period may be extended “a reasonable time” upon a showing of “good cause.” “A reasonable time” means seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0010(3) (February 10, 2012). “Good cause” means factors beyond the applicant’s reasonable control or an excusable mistake. OAR 471-040-0010(1).

Claimant stated on the questionnaire that claimant did not file the requests for hearing on decisions # 74748 and 73248 because claimant did not know about the decisions. However, it appears that decisions # 74748 and 73248 were mailed to claimant at the same address claimant used as the return address on the envelope in which the application for review forms and questionnaires were mailed to EAB. In other words, the documents were mailed to claimant at claimant’s address of record. Generally speaking, documents mailed through the U. S. Postal Service are presumed to have been received by the addressee, subject to evidence to the contrary. OAR 137-003-0520(9). Claimant’s bare assertion of non-receipt is insufficient to overcome the presumption of receipt. Claimant therefore failed to show good cause for the late requests for hearing in this matter based upon the non-receipt of decisions # 74748 and 73248.

Even if claimant had shown good cause, the record fails to show that claimant filed the late requests for hearing within the seven-day “reasonable time” period. Claimant wrote on the questionnaire that the event that prompted claimant to file the late requests for hearing was that claimant received “a letter.” Claimant did not explain what date the letter was received, however, or how that letter informed claimant that decisions # 74748 and 73248 existed. In the absence of that information, we cannot determine whether the requests for hearing in these cases occurred within seven days of that date. Absent such evidence, we cannot conclude that claimant filed the late requests for hearing within a reasonable time. For those reasons, claimant’s late requests for hearing must be dismissed.

DECISION: Hearing Decisions 18-UI-105060 and 18-UI-105061 are affirmed.

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

DATE of Service: April 6, 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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