

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0353

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On December 2, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from October 23, 2016 to November 26, 2016 (decision # 84637). On December 22, 2016, decision # 84637 became final without claimant having filed a timely request for hearing. On February 9, 2018, claimant filed a late request for hearing by telephone. On February 15, 2018, ALJ Kangas issued Order No. 18-UI-103324, dismissing claimant's late request for hearing subject to her right to renew the request by responding to an appellant questionnaire by March 1, 2018. On February 23, 2018, claimant responded to the questionnaire. On March 1, 2018, the Office of Administrative Hearings (OAH) mailed a letter stating the Order No. 18-UI-103324 was canceled. On March 7, 2017, OAH mailed notice of a hearing scheduled for March 21, 2018. On March 21, 2018, ALJ Murdock conducted a hearing, and on March 22, 2018 issued Order No. 18-UI-105782, dismissing claimant's late request for hearing. On April 10, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision.

FINDINGS OF FACT: (1) The Department mailed notice of decision # 84637 to claimant at her address of record. The decision stated that benefits were denied between October 23, 2016 and November 26, 2016, and that she could be responsible for repaying any benefits she had received during that period. Claimant likely received the decision.

(2) Around the time the Department mailed decision # 84637, claimant's son was suffering from terminal cancer. Claimant was entirely occupied supporting her son through his debilitating illness, and did not have the mental capacity to request a hearing or pursue her unemployment insurance case at that time. Claimant's son passed away in February 2017.

(3) In February 2017, the Department mailed another notice of administrative decision to claimant assessing an overpayment for the benefits she had received between October 23, 2016 and November 26, 2016. Claimant did not request a hearing.

(4) Beginning in April 2017, the Department mailed claimant approximately nine monthly billing statements to collect the overpaid benefits. Claimant ignored the statements because she did not have the money to pay them, and did not contact the Department about decision # 84637 or her debt.

(5) In early 2018, claimant received another billing statement from the Department that stated she owed approximately \$1,000.00. She believed her error in claiming benefits was confined to a one-week period, and she should not have to pay back more than that one week of benefits, so she filed a late request for hearing.

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

ORS 657.269 provides that parties have 20 days from the date an administrative decision is mailed 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." OAR 471-040-0040 defines "good cause" as an excusable mistake or factors beyond a party's reasonable control, and "a reasonable time" as seven days from the date the circumstances that prevented a timely filing ceased to exist.

As a preliminary matter, we note that the ALJ concluded in Order No. 18-UI-105782 that claimant did not have good cause to extend the filing period in this case, because while her son's illness was "undoubtedly [] a traumatic and grievous event" claimant continued working and paying bills during the same period of time, so pursuing her unemployment claim was also within her reasonable control. *See* Order No. 18-UI-105782 at 3. We disagree. Claimant's description of her emotional condition at the time decision # 84637 suggests that it was only barely within her reasonable control to pay her bills to prevent eviction or default, and was not within her reasonable control to learn and navigate a complex process such as that which occurs when the Department denies an individual unemployment insurance benefits and the person must request a hearing. It is more likely than not that an individual spending all of her time supporting her son through terminal cancer, as emotionally distraught as claimant described being during the relevant time period, would be incapable of requesting a hearing under the circumstances claimant described. We therefore conclude that claimant showed good cause to extend the filing period in this case.

However, while claimant's filing period may be extended, Oregon law only allows the time period to be extended "a reasonable time," which is defined as seven days after the circumstances that prevented a timely filing ceased to exist. Although it is impossible to know exactly when claimant's circumstances in this case changed, as the circumstances that initially prevented her from filing a timely request for hearing were emotional in nature, the record shows that the Department sent a decision and monthly billing notices to claimant beginning in February 2017 through the beginning of 2018, and it shows that claimant likely received them. Despite having received a decision telling her she owed a debt and approximately nine monthly billing notices, however, claimant did not respond to the notices or request a hearing on decision # 84637. Although claimant likely remained too distraught to deal with her unemployment insurance case in the period immediately following her son's passing, the primary reason for claimant's decision not to respond or request a hearing over time does not appear to be that she remained too emotionally distraught to deal with her unemployment insurance case over an extended period of time. Rather, it appears the primary reasons she did not pursue an appeal or respond to the

billing notices as time passed were that she did not have money to pay the debt, and she did not think she should owe the money anyway. Given the length of the period in which the Department was notifying claimant of the debt resulting from decision # 84637, the majority of which it appears it was, more likely than not, within claimant's reasonable control to contact the Department and request a hearing, we conclude that claimant did not file her late request for hearing in this case within a seven-day "reasonable time" period after the period in which she was suffering acute and debilitating trauma related to the loss of her son ceased to exist. Therefore, although claimant showed "good cause" to extent the filing period in this case past December 22, 2016, she did not show that her February 9, 2018 late filing occurred within "a reasonable time," and, for that reason, her late request for hearing must be dismissed.

DECISION: Order No. 18-UI-105782 is affirmed.

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

DATE of Service: May 7, 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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