

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0407

Modified
Requests to Reopen Allowed
Late Requests for Hearing Allowed

PROCEDURAL HISTORY: On September 15, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant benefits from August 20, 2017 to September 2, 2017 because he failed to provide the Department with some requested information (decision # 130930). On September 21, 2017, the Department served notice of another administrative decision denying claimant benefits from August 27, 2017 to September 2, 2017 because claimant did not fulfill the iMatchSkills® reporting requirement, and that the denial of benefits would continue until claimant fulfilled the reporting requirement as directed (the iMatchSkills® decision). On October 5, 2017, decision # 130930 became final without claimant having filed a timely request for hearing. On October 11, 2017, the iMatchSkills® decision became final.

On December 29, 2017, claimant filed a late request for hearing on the iMatchSkills® decision by telephone. On January 4, 2018, ALJ Kangas issued Order No. 18-UI-100209, dismissing claimant's request for hearing subject to his right to renew the request by responding to an appellant questionnaire by January 18, 2018. On January 8, 2018, claimant responded to the questionnaire. On January 9, 2018, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 18-UI-100209 was canceled. On January 10, 2018, claimant filed a request for hearing on decision # 130930 by mail.

On January 18, 2018, OAH mailed notice of a consolidated hearing scheduled for February 5, 2018 at 9:30 a.m., at which time claimant failed to appear for the hearing. On February 5, 2018, ALJ Meerdink issued Orders No. 18-UI-102497 and 18-UI-102498, dismissing claimant's late requests for hearing on the iMatchSkills® decision and decision # 130930 due to his failure to appear. On February 13, 2018, claimant filed timely requests to reopen the consolidated hearing. On March 12, 2018, OAH mailed notice of a consolidated hearing scheduled for March 26, 2018 at 3:30 p.m. On March 26, 2018, ALJ Shoemake held a consolidated hearing, and on March 30, 2018 issued Order Nos. 18-UI-106317 and 18-UI-106320, allowing claimant's requests to reopen and denying his late requests for hearing on the iMatchSkills® decision and decision # 130930, respectively. On April 16, 2018, claimant filed timely applications for review of Order Nos. 18-UI-106317 and 18-UI-106320 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 18-UI-106317 and 18-UI-106320. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0406 and 2018-EAB-0407).

Based on a *de novo* review of the entire record in this case, and pursuant to ORS 657.275(2), the ALJ's findings and analysis with respect to the conclusion that claimant's requests to reopen are allowed are hereby adopted.

FINDINGS OF FACT: (1) The Department sent notice of the iMatchSkills® decision and decision # 130930 to claimant at his address of record. Claimant did not receive the decisions.

(2) Claimant was not aware that he was having trouble receiving mail in mid- to late-September. His mail was delivered to a mailbox at his apartment complex, and he monitored his mail. The mail carrier left official mail with claimant's apartment complex's office, and they always let him know that he had mail in the office by putting a note on his door. If claimant's mailbox became overfull, the mail carrier always left a note for claimant to come pick up his mail from the post office. He did not receive notes from the office or mail carrier during the relevant time period.

(3) Claimant filed weekly claims but did not receive benefits. During the first and second weeks of December he received letters from the Department that prompted him to contact his local WorkSource Oregon office. On December 26, 2018, claimant went to the WorkSource office; employees there instructed claimant to contact the Department. On December 29, 2017, three days later, claimant contacted the Department, found out about the iMatchSkills® decision, and requested a hearing.

(4) On January 3, 2018, the Department mailed claimant a letter regarding denial of benefits due to decision # 130930. Claimant received the letter shortly thereafter. On January 9, 2018, claimant wrote a letter regarding the denial of benefits. On January 10, 2018, claimant faxed that letter to the Department.

CONCLUSIONS AND REASONS: We disagree with the ALJ and conclude that claimant's late requests for hearing should be allowed.

ORS 657.269 provides that the Department's decisions become final unless a party requests a hearing within 20 days after the decision was mailed. ORS 657.875 provides that the 20-day time period may be extended a reasonable time upon a showing of good cause. OAR 471-040-0010 defines "good cause" to include an excusable mistake or factors beyond an applicant's reasonable control, and "a reasonable time" as seven days after the circumstances that prevented a timely filing ceased to exist.

The ALJ concluded that claimant did not have good cause to file late requests for hearings in these cases because the decisions were both mailed to claimant at his address of record, and "[t]he law presumes that a letter duly directed and mailed was received in the regular course of the mail," unless claimant overcomes the presumption.¹ The ALJ further concluded that claimant did not overcome the assumption because his "assertion alone of non-receipt . . . is not sufficient . . . [and] [i]f the address is correct as

¹ Order Nos. 18-IU-106317 and 18-UI-106320 at 4.

claimant confirmed, it is not likely that he would receive some mail from the Employment Department and not the administrative decision unless it was overlooked.”²

We agree with the ALJ that Oregon law includes a mail receipt presumption, and we agree that, generally speaking, a bare assertion by an individual that he or she did not receive mail would not be sufficient to overcome that presumption. We disagree with the ALJ, however, that this record supports a finding that claimant received and overlooked the decisions at issue. Claimant received mail in a mail box, received official mail through his apartment complex office, and received notes about mail delivery issues from his mail carrier. Those conditions suggest that, if claimant had received the administrative decisions during the relevant time period, he would have received them through his mailbox, the apartment complex office, or the mail carrier, or he would have received a note from the apartment complex office or mail carrier to collect the decisions from the office or post office. The fact that he did not receive the administrative decisions through those means, but received other mail from the Department, is strong circumstantial evidence that some mail delivery to claimant’s address, or receipt by him of some mail at that address, was interrupted during the relevant time period. Likewise, the fact that claimant promptly followed up with WorkSource and the Department upon receiving mail about his non-receipt of benefits in December and January strongly suggests that, had claimant received mail from the Department in September stating that his benefits were being denied, it is more likely than not that claimant would have promptly contacted the Department at that time. On this record, it is more likely than not that claimant did not receive the iMatchSkills® decision or decision # 130930, which amounted to a factor beyond his reasonable control that prevented him from filing timely requests for hearing. He therefore established good cause to extend the filing deadlines in these matters.

The filing deadlines may only be extended seven days after the date the circumstances that prevented claimant from filing timely requests for hearing ceased to exist. Claimant first learned of the iMatchSkills® decision on December 29, 2017 and immediately filed his late request for hearing. Because the late request was filed within seven days of when he learned of the decision, he filed it within a reasonable time and his late request for hearing on the iMatchSkills® decision is therefore allowed. Claimant first learned of decision # 130930 after receiving the Department’s January 3, 2018 letter regarding his denial of benefits, likely sometime between January 4, 2018 and January 6, 2018. He filed his late request for hearing on that decision on January 10, 2018, which was within seven days of the date he likely received decision # 130930. Because claimant filed his late request for hearing within a reasonable time, his late request for hearing on decision # 130930 is, likewise, allowed. Having concluded that claimant’s late requests for hearing on the iMatchSkills® decision and decision # 130930 should be allowed, this matter is returned to OAH for hearings on the merits of those decisions.

DECISION: Order Nos. 18-UI-106317 and 18-UI-106320 are modified, as outlined above, and these matters returned to the Office of Administrative Hearings for further proceedings.

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

DATE of Service: April 30, 2018

² *Id.*