

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0589**

*Reversed*  
*Late Requests for Hearing Allowed*

**PROCEDURAL HISTORY:** On March 21, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with Express Employment Professionals without good cause (decision # 90058). On March 28, 2018, the Department served notice of an administrative decision assessing a \$141 overpayment, \$21.15 monetary penalty and 8 penalty weeks (decision # 193847). On April 10, 2018, decision # 90058 became final without claimant having filed a timely request for hearing, and on April 17, 2018, decision # 193847 became final. On April 20, 2018, claimant filed late requests for hearing on both decisions by telephone. On April 25, 2018, ALJ Kangas issued Order No. 18-UI-108065, dismissing claimant's late request for hearing on decision # 90058, and Order No. 18-UI-108060, dismissing claimant's late request for hearing on decision # 193847, both subject to claimant's right to renew the request by responding to an appellant questionnaire by May 9, 2018. On April 30, 2018, claimant responded to the questionnaire. On May 7, 2018, the Office of Administrative Hearings (OAH) notified claimant that Order Nos. 18-UI-108060 and 18-UI-108065 were canceled. On May 8, 2018, OAH mailed notice of a consolidated hearing scheduled for May 24, 2018. On May 24, 2018, ALJ R. Frank conducted a consolidated hearing, and on May 30, 2018 issued Order No. 18-UI-110326, re-dismissing claimant's late request for hearing on decision # 193847, and Order No. 18-UI-110328, re-dismissing claimant's late request for hearing on decision # 90058. On June 7, 2018, claimant filed applications for review of both Orders with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 18-UI-110326 and 18-UI-110328. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0589 and 2018-EAB-0591).

**FINDINGS OF FACT:** (1) On March 21, 2018, the Department mailed notice of decision # 90058 to claimant at what was her address of record at the time, on 145<sup>th</sup> Avenue in Portland, Oregon. On March 23, 2018, claimant called the Department to report that she was going to move to California. During the call, claimant changed her address to one on Morningside Drive in Garden Grove, California. Claimant and the Department employee with whom she spoke did not discuss decision # 90058 during that call.

(2) On March 28, 2018, the Department mailed notice of decision # 193847 to claimant at her Morningside Drive address. On April 1, 2018, claimant first arrived at the Morningside Drive address.

(3) Claimant did not receive all of the mail sent to her at the Morningside Drive address, and never received notice of decisions # 90058 or 193847. Neither decision was received by claimant at the 145<sup>th</sup> Avenue address or Morningside Drive address, forwarded to her, or given to her by the owner of the Morningside Drive address. The decisions were not returned to the Department as undeliverable by the U.S. Postal Service.

(4) Claimant was “waiting for the mail and I waited and waited” and when she did not receive mail from the Department, she called the Department, at which time she requested hearings. Transcript at 9.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ, and conclude that claimant’s late requests for hearing should be allowed and hearings held on the merits of decisions # 90058 and 193847.

ORS 657.269 provides that individuals have 20 days from the date an administrative decision was mailed to file a timely request for hearing. ORS 657.875 provides that the 20-day filing period may be extended “a reasonable time” upon a showing of “good cause.” OAR 471-040-0010 (February 10, 2012) defines “good cause” as 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 hearing in these cases because she “offered testimony on most points of inquiry that was neither certain nor persuasive,” and that “[w]hat is known in this case is that two related administrative decisions were mailed to claimant one week apart, each to a different address designated by claimant herself,” and “[n]either was returned to the Employment Department as undeliverable.”<sup>1</sup> The ALJ wrote, “Absent convincing evidence to the contrary, claimant cannot meet her burden and demonstrate that factors beyond her reasonable control or an excusable mistake resulted in the untimely filing of her appeal.”<sup>2</sup> We disagree with the ALJ and conclude that claimant established good cause to extend the filing periods in these cases.

The undisputed facts in this case are that claimant planned to move to California, and notified the Department of her new address prior to moving in an effort to ensure that she received all the mail the Department sent to her. It is also undisputed that claimant monitored her mail at 145<sup>th</sup> Avenue and Morningside Drive while residing at those addresses, was “waiting for the mail and I waited and waited” to receive mail from the Department, and that she did not always receive mail sent to her at the Morningside Drive address. Notwithstanding claimant’s efforts to ensure the Department had her correct address, and her efforts to monitor her mail, it appears that factors including the timing of her move two days after decision # 90058 was mailed to her and her inability to reliably receive mail at the Morningside Drive address likely resulted in her failure to receive notice of decisions # 90058 or 193847. Those factors were more likely than not beyond claimant’s reasonable control. To any extent claimant could or should have been more precise about the dates of her move, or more carefully monitored both addresses for mail from the Department, her failure to do so was at worst an “excusable

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<sup>1</sup> Order Nos. 18-UI-110326 and 18-UI-110328 at 3.

<sup>2</sup> *Id.*

mistake” that occurred despite her substantial efforts to comply with the Department’s expectation that she promptly notify the Department of any address changes and diligently monitor her mail. It appears on this record that she called the Department on April 20<sup>th</sup> and immediately requested hearings upon learning of the decisions at issue in this case. Claimant’s late requests for hearing were therefore filed within “a reasonable time.”

Claimant showed good cause to extend the filing periods in these cases, and her late requests for hearing are therefore allowed. Claimant is entitled to hearings on the merits of decisions # 90058 and 193847.

**DECISION:** Order Nos. 18-UI-110326 and 18-UI-110328 are set aside, as outlined above.

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

**DATE of Service: June 26, 2018**

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