

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0605

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On January 31, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from December 31, 2017 to January 13, 2018 (decision # 93716). On February 20, 2018, decision # 93716 became final without claimant having filed a timely request for hearing. On April 25, 2018, claimant filed a late request for hearing. On April 30, 2017, ALJ Kangas issued Order No. 18-UI-108391, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by May 14, 2018. On May 14, 2018, claimant responded to the appellant questionnaire. On May 15, 2018, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 18-UI-108391 was canceled. On May 23, 2018, OAH mailed notice of a hearing scheduled for June 8, 2018. On June 8, 2018, ALJ Griffin conducted a hearing, and on June 12, 2018 issued Order No. 18-UI-111069, re-dismissing claimant's late request for hearing. On June 15, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Between early January 2018 and April 6, 2018, claimant was in California working. He did not monitor his mail while he was out of state and did not arrange for someone else to monitor his mail, and therefore did not receive notice of decision # 93716 when it was mailed to him.

(2) On April 6, 2018, claimant returned home. On April 7, 2018, claimant opened decision # 93716. Claimant read and disagreed with the decision, but waited until April 25, 2018 to request a 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 after the date an administrative decision is issued to request a hearing. ORS 657.875 provides that the 20-day deadline may be extended "a reasonable time" upon a showing of "good cause." "A reasonable time" is defined as seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0010(3).

The circumstance that prevented claimant from filing a timely request for hearing was that he was out of state working and did not receive the decision when it came in the mail. We disagree with the ALJ that failing to monitor one's mail, or arrange for someone else to monitor it, for a three month period was a circumstance beyond claimant's control or an excusable mistake. Assuming for the sake of argument that claimant's circumstance amounted to "good cause," however, the circumstance would have ceased to exist on April 7, 2018, when claimant opened his mail and received the decision at issue. Claimant therefore would have had only seven days from April 7, 2018 to file his late request for hearing within the seven-day "reasonable time" period. In this case, however, claimant waited 18 days, until April 25, 2018 to file, and therefore did not file his request within "a reasonable time."

Claimant argued at the hearing that he did not file his request for hearing sooner because he had difficulty figuring out the process for how to return the request for hearing form.¹ In other words, claimant's argument is that the complexity of the request for hearing process was another circumstance beyond his reasonable control that prevented him from filing his request for hearing prior to April 25th. However, the request for hearing form itself, which was included with the copy of the decision mailed to claimant, merely instructed claimant to fill in the form by identifying whether he was the claimant or employer, answering the question "Do you need an interpreter?" by checking a box "Yes" or "No," providing his phone number, and listing any dates he was not available for a hearing, then faxing or mailing the form to the Office of Administrative Hearings; the form listed the address and fax number for that office on the form itself.² The Department also mailed information about how to request a hearing in the same envelope as the decision, which included instructions to file a request for hearing if a party disagreed with it by returning the request for hearing form described above, calling the UI center (at a phone number listed on the decision itself), faxing or mailing a letter requesting a hearing, or filing a request in person.³ Because those instructions were included with the decision at issue, and the instructions were not complex, claimant has not shown that they amounted to another factor or circumstance beyond his control or an excusable mistake that prevented him from filing his late request for hearing until the seven day "reasonable time" period ending on April 25th.

Because claimant did not file his late request for hearing within a reasonable time after the circumstances that prevented a timely filing ceased to exist, and regardless whether or not his circumstance amounted to good cause, he is not entitled to have the filing period extended. Claimant's late request for hearing is, therefore, dismissed. Claimant is not entitled to a hearing on decision # 93716. That decision remains undisturbed.

DECISION: Order No. 18-UI-111069 is affirmed.

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

¹ Audio recording ~ 26:00.

² We take notice of the contents of the Department's standard request for hearing form contents, which is contained in Department records and within our specialized knowledge. 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.

³ Audio recording at ~ 28:10.

DATE of Service: June 26, 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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