

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0628

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On April 13, 2018, the Oregon Employment Department (the Department) served notice of administrative decision # 90532 concluding Petco Animal Supplies Stores Inc. discharged claimant for misconduct on or about March 2, 2018 and administrative decision # 94108 concluding that claimant was not available for work from March 18 through April 7, 2018. On May 3, 2018, decisions # 90532 and 94108 became final without claimant having filed a request for hearing. On May 21, 2018, claimant filed late requests for hearing on both decisions. On May 23, 2018, ALJ Kangas issued Order Nos. 18-UI-109971 and 18-UI-109972, dismissing claimant's requests for hearing subject to her right to renew the requests by filing a response to an appellant questionnaire by June 6, 2018. On June 5, 2018, claimant filed timely response to the appellant questionnaire. ALJ Kangas considered claimant's response, and on June 11, 2018 issued Order Nos. 18-UI-111096 and 18-UI-111093 dismissing claimant's late requests for hearing as without good cause. On June 18, 2018, claimant filed timely applications for review of Order Nos. 18-UI-111096 and 18-UI-111093 with the Employment Appeals Board (EAB).

EAB considered both hearing records and claimant's written argument.

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 18-UI-111096 and 18-UI-111093. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0628 and 2018-EAB-0629).

FINDINGS OF FACT: (1) Claimant received decisions # 90532 and 94108 within a few days after the Department mailed them to her on April 13, 2018. Decision # 90532 stated that claimant was denied benefits from February 25, 2018 until she received payment from an employer, or employers, in the amount of \$1,144, earned after March 4, 2018. Decision # 94108 stated that claimant was denied benefits from March 18, 2018 until the reason for her denial had ended.

(2) Claimant understood she had until May 3, 2018 to file timely requests for hearing on decisions # 90532 and 94108. However, claimant failed to do so because she agreed with decision # 94108 and did not believe the decisions would affect her future weekly claims for benefits.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant filed late requests for hearing on decisions # 90532 and 94108 without good cause. Claimant's requests for hearing therefore are dismissed.

ORS 657.269 provides that the Department's decisions become final unless a party files a request for hearing within 20 days after the date it is mailed. ORS 657.875 provides that the 20-day deadline may be extended a "reasonable time" upon a showing of "good cause." OAR 471-040-0010 (February 10, 2012) provides that "good cause" includes factors beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors ceased to exist. Good cause does not include not understanding the implications of a decision or notice when it is received. OAR 471-040-0010(1)(b)(B).

Here, claimant failed to file timely requests for hearings on decisions # 90532 and 94108 because she agreed with decision # 94108 and did not believe the decisions would affect her future weekly claims for benefits. Under OAR 471-040-0010(1)(b)(B), however, claimant's failure to understand the potential implications of decisions # 90532 and 94108 does not constitute good cause for filing her requests for hearing late. Claimant's requests for hearings on decisions # 90532 and 94108 therefore are dismissed.

DECISION: Order No. 18-UI-111096 and 18-UI-111093 are affirmed.

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

DATE of Service: June 28, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.