

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0741

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On April 17, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 74525). On May 7, 2018, decision # 74525 became final without claimant having filed a timely request for hearing. On May 8, 2018, claimant filed a late request for hearing by telephone.¹ On June 6, 2018, ALJ Kangas issued Order No. 18-UI-110815, dismissing claimant's late request for hearing subject to his right to renew his request by responding to an appellant questionnaire by June 20, 2018. On June 20, 2018, claimant responded to the questionnaire. On June 26, 2018, the Office of Administrative Hearings (OAH) issued a letter stating that Order No. 18-UI-110815 was canceled. On July 3, 2018, OAH mailed notice of a hearing scheduled for July 17, 2018. On July 17, 2018, ALJ R. Frank conducted a hearing, and on July 20, 2018 issued Order No. 18-UI-113550, re-dismissing claimant's late request for hearing. On July 27, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Department did not pay claimant benefits when he filed weekly claims for benefits between March 18, 2018 and April 28, 2018 (weeks 12-18 to 17-18). From week 12-18 to 15-18, the Department sent weekly letters to claimant stating that he was not being paid benefits because of an issue pending on his claim. Claimant received the letters.

(2) On April 17, 2018, the Department mailed notice of decision # 74525 to claimant at his address of record on Fischer Road. Around that time, claimant resided at that address.

(3) During weeks 16-18 to 17-18, the Department sent letters to claimant stating that he was not being paid benefits because of a decision that was reached on his claim. Claimant received the letters but did not understand that the verbiage in the letters was different than the verbiage in the letters he had received during prior weeks, or that the Department had denied him benefits.

¹ The Department's "Telephone Request For Hearing" form and Order No. 18-UI-113550 both stated that claimant filed his late request for hearing on May 11, 2018. That was error. The Department's witness established at the hearing that claimant actually filed his late request for hearing during a call to the Department on May 8, 2018, not May 11, 2018.

(4) After claiming week 17-18, claimant stopped claiming benefits. He had a lot going on in his life and found it difficult to remember to claim every week since the Department was not paying benefits to him.

(5) Based upon the letters he had received from the Department about the pending issue on his claim, claimant had expected to hear from the Department at some point. On May 8, 2018, claimant called the Department to ask about the status of his claim and learned of the April 17th decision denying him benefits. Claimant immediately filed a late request for hearing by telephone during that call.

(6) During the middle of May 2018, claimant moved from the Fischer Road address to one on 16th Avenue. On July 13, 2018, claimant notified the Department of his address change.

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

ORS 657.269 provides that individuals have 20 days from the date of an administrative decision 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. OAR 471-040-0010 defines "good cause" as an "excusable mistake" or "factors beyond an applicant's reasonable control," and provides that "good cause" does not include failure to receive a document due to not notifying the Department or OAH of an updated address while claiming benefits or when the person reasonably should know of a pending appeal, nor does it include "[n]ot understanding the implications of a decision or notice when it is received."

Claimant argued that he did not file a timely request for hearing because he did not know about the April 17th decision in his case. Claimant suggested that his change of address might have been a factor in his failure to receive the decision; however, the Department mailed the decision to him at the Fischer Road address in April 2018, and he did not move from that address until mid-May 2018. It is therefore unlikely that his change of address was a factor in his failure to receive the decision at issue. To any extent his address change might nevertheless have been a factor in his failure to receive the April 17th decision, claimant delayed notifying the Department of his address change until two months after he moved, and failing to keep his address updated is not considered good cause under OAR 471-040-0010.

Claimant argued that he did not receive the Department's April 17th decision, but he did not know why he would not have received the April 17th decision, and did not suggest that it was mis-delivered or that he experienced a mail service interruption during the relevant time period that would have caused him to miss receiving that particular item. Documents sent through the U.S. Postal service are presumed to have been received by the addressee, subject to evidence to the contrary. OAR 137-003-0520(10) (January 31, 2012). Claimant's assertion of non-receipt, without information suggesting it is more likely than not that the decision was not delivered to him, is insufficient to overcome the presumption of receipt. Claimant did not establish that he failed to receive the April 17th decision, or that he was prevented by his non-receipt of the decision from timely requesting a hearing in this case.

Moreover, even if he had, claimant acknowledged receiving other mail from the Department at the Fischer Road address, including weekly letters from the Department stating that his claim was pending and, likely, two stating that his claim was denied. To any extent claimant might not have realized the significance of those letters, or might not have noticed that the last two letters he received stated he had

been denied benefits, not understanding the implications of a decision or notice when it is received is not considered good cause under OAR 471-040-0010.

Claimant did not establish good cause for his late request for hearing. The late request for hearing is, therefore, dismissed.

DECISION: Order No. 18-UI-113550 is affirmed.

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

DATE of Service: August 9, 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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