

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0765-R

*On Reconsideration, EAB Decisions 2018-EAB-0759 and 2018-EAB-0765 Undisturbed
Order Nos. 18-UI-113579 and 18-UI-113587 Affirmed
Requests to Reopen Denied*

PROCEDURAL HISTORY: On April 24, 2018, the Oregon Employment Department (the Department) served two notices of two administrative decisions, one concluding claimant was not able, available, and actively seeking work from March 25, 2018 to April 21, 2018 (decision # 124242), and the other concluding that the employer discharged claimant but not for misconduct (decision # 125520). On April 25, 2018, claimant filed a timely request for hearing on decision # 124242. On May 8, 2018, the employer filed a timely request for hearing on decision # 125520.

On May 8, 2018, the Office of Administrative Hearings (OAH) mailed notice of a hearing on decision # 124242 scheduled for May 22, 2018 at 1:30 p.m. On May 17, 2018, OAH mailed notice of a hearing on decision # 125520 scheduled for May 30, 2018 at 10:45 a.m.

On May 22, 2018, ALJ Amesbury issued Order No. 18-UI-109904, dismissing claimant's request for hearing on decision # 124242 for failure to appear at the May 22nd hearing. On May 30, 2018, ALJ Seideman held a hearing on decision # 125520 and issued Order No. 18-UI-110333, concluding that the employer discharged claimant for misconduct. On June 11, 2018, Order No. 18-UI-109904 became final without claimant having filed a timely request to reopen. On June 19, 2018, Order No. 18-UI-110333 became final without claimant having filed a timely application for review or request to reopen.

Between June 20, 2018 and June 28, 2018, claimant filed late requests to reopen the hearings on Order Nos. 18-UI-109904 and 18-UI-110333.¹ On July 3, 2018, OAH mailed notice of a hearing on claimant's request to reopen the May 22, 2018 hearing on decision # 124242 scheduled for July 18, 2018 at 8:15 a.m. On July 11, 2018, OAH mailed notice of a hearing on claimant's request to reopen the May 30, 2018 hearing on decision # 125520 scheduled for July 18, 2018 at 9:30 a.m.

¹ Documents filed by mail are deemed "filed" on the postmark date affixed to the envelope by the U.S. Postal Service, or, if absent, the most probable date of mailing. OAR 471-040-0005(4)(b). The envelope in which claimant mailed his request to reopen in this case lacked a postmark; however he hand-dated the form he mailed to request reopening on June 20, 2018, and the envelope was received by EAB on June 28, 2018, making it probable that he mailed the envelope sometime between those dates.

On July 18, 2018, ALJ Amesbury conducted two hearings. On July 20, 2018, the ALJ issued Order No. 18-UI-113587, concluding that claimant had good cause to extend the deadline in which to file a request to reopen the May 22nd hearing, but did not have good cause to reopen the May 22nd hearing on decision # 124242. Also on July 20, 2018, the ALJ issued Order No. 18-UI-113579, concluding that claimant did not have good cause for filing a late request to reopen the May 30th hearing on decision # 125520, denying claimants reopen request, and concluding that Order No. 18-UI-110333 remained undisturbed.

On August 3, 2018, claimant filed timely applications for review of Order Nos. 18-UI-113579 and 18-UI-113587 with the Employment Appeals Board (EAB). Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 18-UI-113579 and 18-UI-113587. On August 9, 2018, EAB issued EAB Decisions 2018-EAB-0759 and 2018-EAB-0765, affirming and adopting Order Nos. 18-UI-113579 and 18-UI-113587.

On August 16, 2018, EAB received a timely written argument from claimant, which he sent via facsimile on August 16, 2018. This decision is to reconsider EAB Decisions 2018-EAB-0759 and 2018-EAB-0765 in light of claimant's timely written argument, pursuant to EAB's authority under ORS 657.290(3). For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0759-R and 2018-EAB-0765-R).

CONCLUSIONS AND REASONS: EAB Decisions 2018-EAB-0759 and 2018-EAB-0765, which affirmed and adopted Order Nos. 18-UI-113579 and 18-UI-113587, which denied claimant's request to reopen the hearings on decisions # 125520 and # 124242, are adhered to on reconsideration.

In his August 16, 2018 written argument, claimant asked EAB to consider new information regarding his work separation. EAB may consider new information that is not part of the record if the information is relevant and material to EAB's determination and the party offering the information demonstrates that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. OAR 471-040-0090 (October 29, 2006). However, the only issues before EAB are whether claimant's request to reopen the hearings on decisions # 125520 and # 124242 are subject to dismissal without a showing of good cause, and claimant's written argument does not pertain to those issues. Claimant therefore failed to establish good cause for filing a late request to reopen the hearing on decision # 125520 and for reopening the hearing on decision # 124242, which therefore are subject to dismissal.

DECISION: EAB Decisions 2018-EAB-0759 and 2018-EAB-0765 are adhered to on reconsideration. Order Nos. 18-UI-113579 and 18-UI-113587 are affirmed.

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

DATE of Service: August 31, 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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