

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0769

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY: On April 26, 2018, the Oregon Employment Department (the Department) served, by mail, notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 111714). On May 16, 2018, decision # 111714 became final without claimant having filed a request for hearing. On June 19, 2018, the Department served, by mail, notice of an administrative based on decision # 111714, concluding that claimant was overpaid \$14,553 in benefits that she must repay the Department (decision # 124611). On July 9, 2018, decision # 124611 became final without claimant having requested a hearing. On July 17, 2018, claimant filed late requests for hearing on decisions # 111714 and # 124611. On July 19, 2018, ALJ Kangas issued Order Nos. 18-UI-113450 and 18-UI-113448, dismissing claimant's late requests for hearing subject to her right to renew the requests by responding to an appellant questionnaire by August 2, 2018. On August 3, 2018, claimant filed a late response to the appellant questionnaire with the Office of Administrative Hearings (OAH) and timely applications for review of Order Nos. 18-UI-113450 and 18-UI-113448 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 18-UI-113450 and 18-UI-113448. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0769 and 2018-EAB-0781). EAB considered both hearing records, including claimant's response to the appellant questionnaire, which EAB marked and received into evidence as EAB Exhibit 1 pursuant to OAR 471-041-0090(1), under which exhibits offered, but not received, into evidence may be received into evidence as necessary to complete the record. A copy of EAB Exhibit 1 is attached to this decision.

CONCLUSIONS AND REASONS: Claimant's late requests for hearing on decisions # 111714 and # 124611 are dismissed as untimely without a showing of good cause.

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.

In her response to the appellant questionnaire, claimant asserted that she filed her requests for hearing on decisions # 111714 and # 124611 late for the following reasons: She did not receive the April 26, 2018 notice of decision # 111714, which concluded that she quit working for the employer without good cause. She had been waiting for a decision in the mail after speaking to a Department employee, and speculated that either there was an “issue with mail,” or “someone” in her home “misplaced” it. Claimant did not personally receive the June 19, 2018 notice of decision # 124611, which assessed the overpayment, until mid-July 2018 because she “had been out of town.”

With respect to decision # 111714, however, documents sent through the United States Postal Service (USPS) 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 mere speculation that she may not have received the April 26, 2018 notice of decision # 111714 due to an “issue with mail” is insufficient to overcome that presumption. Likewise, claimant’s mere speculation that “someone” at her home may have “misplaced” the notice is not sufficient to show that her failure to personally receive it was due to factors beyond her reasonable control or an excusable mistake on her part. With respect to decision # 111714, claimant did not state during what period she was out of town or, given that she had been waiting for a decision in the mail after speaking to a Department employee, what steps, if any, she took to monitor her mail while she was out of town. Absent such information, we cannot find that claimant’s failure to personally receive the June 19, 2018 notice of decision # 124611 in time to file a timely request for hearing was due to factors beyond her reasonable control or an excusable mistake on her part.

Claimant failed to show good cause to extend the deadline for filing her requests for hearing on decisions # 111714 and # 124611. Her late requests for hearing therefore are dismissed.

DECISION: Order Nos. 18-UI-113450 and 18-UI-113448 are affirmed.

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

DATE of Service: August 17, 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.