

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0844

Affirmed
Late Request to Reopen Denied

PROCEDURAL HISTORY: On June 14, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 132310). Claimant filed a timely request for hearing. On June 22, 2018, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for July 6, 2018 at 10:45 a.m., at which time claimant failed to appear. On July 9, 2018, ALJ Schmidt issued Order No. 18-UI-112717, dismissing claimant's request for hearing for failure to appear. On July 30, 2018, Order No. 18-UI-112717 became final without claimant having filed a timely request to reopen the hearing. On July 31, 2018, claimant filed a late request to reopen the hearing. On August 8, 2018, ALJ Kangas considered claimant's request and issued Order No. 18-UI-114531, denying claimant's late request to reopen the July 6th hearing on decision # 132310. On August 28, 2018, claimant filed a timely application for review with the Employment Appeals Board (EAB).

EAB did not consider claimant's written argument when reaching this decision because claimant did not include a statement affirming that she sent a copy of her argument to the employer, as required under OAR 471-041-0080(2)(a). Even if we had, however, the outcome of this decision would remain the same because claimant's argument was not material to the only issue before EAB in this case, that is, whether or not claimant had good cause to file her request to reopen late.

FINDINGS OF FACT: Claimant asserted that she missed the July 6th hearing because she did not receive notice that the hearing was scheduled. Claimant did not explain why she did not file a timely request to reopen the hearing.

CONCLUSIONS AND REASONS: Claimant's late request to reopen is denied.

ORS 657.270(5)(c)(B) provides that a party filing a request to reopen must do so within 20 days after the issuance of the written decision by the administrative law judge.

The 20-day period claimant had to request reopening after Order No. 18-UI-112717 was issued expired on July 30, 2018 without claimant having filed her request. Because claimant filed her request to reopen late, we do not have jurisdiction to decide whether or not she had good cause to reopen the hearing unless claimant first proved that she had good cause to file the request to reopen late. Therefore, the only issue before us is whether claimant had good cause to file her request to reopen late.

ORS 657.875 provides that the 20-day filing period may be extended a reasonable time upon a showing of good cause. OAR 471-040-0041(3) defines “a reasonable time” as seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041(2) defines “good cause,” in brief part, as “an excusable mistake” or “factors beyond an applicant’s reasonable control.”

Claimant did not include any explanation in her request to reopen explaining why she filed late, as required by OAR 471-040-0041(4). Because claimant did not explain why she filed her request to reopen late, she did not prove that she had good cause for the late filing. Because claimant did not prove that she had good cause for the late filing, her late request to reopen is denied.

Because claimant’s late request to reopen is denied, she does not have the right to a hearing on why she missed the hearing or whether those reasons might amount to good cause for missing the hearing, nor does she have the right to a hearing on the merits of decision # 132310. That decision therefore remains undisturbed.

DECISION: Order No. 18-UI-114531 is 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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