

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0944

Affirmed
Late Requests for Hearings Dismissed

PROCEDURAL HISTORY: On May 22, 2018, the Oregon Employment Department (the Department) served, by mail, notice of an administrative decision concluding that claimant did not actively seek work from April 29, 2018 through May 12, 2018 (decision # 155030). On June 11, 2018, decision # 155030 became final without claimant having filed a request for hearing. On July 24, 2018, the Department served notice of an administrative decision concluding that claimant was overpaid \$482 in benefits that he must repay the Department (decision # 83225). On August 13, 2018, decision # 83225 became final without claimant having filed a request for hearing. On August 21, 2018, claimant filed late requests for hearings on both decisions. On August 28, 2018, ALJ Kangas issued Order No. 18-UI-115665 and Order No. 18-UI-115662, dismissing claimant's requests for hearings as untimely without a showing of good cause, subject to his right to renew the requests by responding to an appellant questionnaire by September 11, 2018. Claimant filed a timely response to the appellant questionnaire. ALJ Kangas reviewed claimant's response, and on September 14, 2018 issued Order No. 18-UI-116539 and Order No. 18-UI-116541, re-dismissing claimant's late requests for hearings. On September 22, 2018, claimant filed timely applications for review of Order No. 18-UI-116539 and Order No. 18-UI-116541 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Order Nos. 18-UI-116539 and 18-UI-116541. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2018-EAB-0944 and 2018-EAB-0946). EAB considered both hearing records. Claimant submitted written argument containing new information regarding his late request for hearings on decisions # 155030 and # 83225, but failed to show that factors or circumstances beyond his reasonable control prevented him from including the information in his response to the appellant questionnaire. EAB therefore did not consider claimant's new information when reaching this decision. *See* ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006).

FINDINGS OF FACT: (1) Claimant had stopped claiming benefits before the Department mailed the May 22, 2018 notice of decision # 155030 to his address of record.¹ Claimant did not receive the notice until June 27, 2018 because, “I was out of town working. My mail was on hold all the time I was out of town.” Claimant delayed filing a late request for hearing on decision # 155030 because he believed that filing a request for hearing after the filing deadline had passed would not “do any good.”

(2) Claimant filed a late request for hearing on decision # 83225 for unknown reasons.

CONCLUSIONS AND REASONS: Claimant’s late requests for hearing on decisions # 155030 and # 83225 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.

Here, with respect to decision # 155030, assuming, arguendo, that claimant had good cause for failing to file a timely request for hearing because he was working out of town and did not receive the decision until June 27, 2018, the next issue is whether he filed within a reasonable amount of time. Claimant filed his request for hearing 55 days after he first became aware of decision # 155030, and therefore more than seven days after the circumstances that prevented a timely filing ceased to exist. We cannot find that claimant filed his request for hearing within a reasonable time as defined under OAR 471-040-0010.

Decision # 83225 was served by the Department on July 24, 2018, and became final on August 13, 2018. Claimant failed to provide any explanation as to why he failed to file a request for hearing until August 21, 2018, eight days after the deadline had passed. Claimant therefore failed to show that factors or circumstances beyond his reasonable control or an excusable mistake on his part prevented him from filing a timely request for hearing.

Claimant failed to show that he filed his late request for hearing on decision # 155030 within a reasonable time. Claimant also failed to show good cause to extend the deadline for filing his request for hearing on decision # 83225. His late requests for hearing therefore are dismissed.

DECISION: Order No. 18-UI-116539 and Order No. 18-UI-116541 are affirmed.

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

DATE of Service: October 19, 2018

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

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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