

EMPLOYMENT APPEALS BOARD DECISION
2019-EAB-0177

Affirmed
Late Requests for Hearing Dismissed

PROCEDURAL HISTORY AND FINDINGS OF FACT: (1) On May 11, 2017, claimant filed an initial claim for unemployment insurance benefits. She filed weekly claims for benefits from May 7, 2017 to December 2, 2017, and last filed a weekly claim for benefits on December 4, 2017.

(2) On October 29, 2017, claimant contracted MRSA at work. Thereafter, she received frequent medical treatment. On November 14, 2017, claimant was admitted into the hospital for medical treatment. Claimant remained in the hospital for approximately six weeks.

(3) On December 5, 2017, the Oregon Employment Department (the Department) issued notice of four administrative decisions: decision # 84003 concluding that claimant was not available for work from July 16, 2017 to July 22, 2017; decision # 75720, concluding claimant was not able to work from October 29, 2017 to December 2, 2017; decision # 85052, concluding claimant was not available for work from September 3, 2017 to September 30, 2017; and decision # 91101, concluding claimant was not available for work from June 25, 2017 to July 8, 2017. On December 7, 2017, the Department issued notice of administrative decision # 95943, concluding claimant was not available to work from October 1, 2017 to October 14, 2017.

(4) Each of the five decisions issued December 5, 2017 included the following statements (emphasis in originals; dates removed since they differ among the Department's decisions):

You have the right to appeal this decision if you do not believe it is correct. You may return the attached form or contact us to request a hearing by telephone. Your request for appeal must be received not later than [DATE]. This decision **DENIES** benefits. If there are other decisions affecting your eligibility for benefits, you must appeal those decision(s) separately.

IMPORTANT: If you were paid benefits for any week covered by this decision, you may have to pay us back. You'll get information about how much you owe and how to pay us back, after the appeal period. The appeal period ends on [DATE].

If you do not understand this decision, contact the Unemployment Insurance Center above immediately.

(5) On December 26, 2017, decisions # 84003, 75720, 85052, and 91101 became final without claimant having filed timely requests for hearing. Also on December 26, 2017, claimant was discharged from the hospital and was transferred to a residential rehabilitation facility. On December 27, 2017, decision # 95943 became final.

(6) While claimant was receiving residential rehabilitative care, her son and neighbor brought mail to her. She received the December 2017 administrative decisions, but not necessarily promptly. On January 10, 2018, claimant responded to a Department questionnaire about her 2017 wages. Claimant's response included detailed answers to questions and copies of paystubs.

(7) On February 1, 2018, the Department mailed claimant notice of administrative decision # 200311, concluding she had committed fraud by underreporting her earnings in 2017. On February 6, 2018, claimant filed a timely request for hearing on the fraud decision. On March 21, 2018, claimant failed to attend a hearing on the fraud matter.

(8) Between May 8, 2018 and May 17, 2018, claimant was hospitalized again. After being discharged from the hospital, claimant received outpatient therapy but was not readmitted as an inpatient to any medical or rehabilitative facility until December 2018.

(9) On May 15, 2018, the Department issued decision # 164549, assessing an \$882 overpayment claimant was required to repay. On May 16, 2018, the Department issued decision # 71121, assessing a \$363 overpayment claimant was required to repay. On May 17, 2018, the Department issued decision # 72709, assessing a \$441 overpayment claimant was required to repay. On May 22, 2018, the Department issued decision # 132859, assessing a \$1,764 overpayment claimant was required to repay. On May 23, 2018, the Department issued decisions # 72437, assessing an \$882 overpayment claimant was required to repay, and # 71939, assessing a \$441 overpayment claimant was required to repay.

(10) Each of the six overpayment decisions the Department issued in May 2018 included the following statements (emphasis in originals; dates and dollar amounts removed since they differ among the Department's decisions):

Claimant is overpaid.

DECISION:

Claimant received benefits to which he/she was not entitled to receive. Claimant was ineligible to receive these benefits.

OVERPAYMENT:

Claimant was overpaid [dollar amount] and must repay this amount to the Oregon Employment Department. Repayment information is enclosed.

IF YOU DO NOT AGREE WITH THIS DECISION SEE THE ENCLOSED INFORMATION FOR YOUR APPEAL RIGHTS.

Date Mailed: [DATE]. If you disagree with the amount of the overpayment, you have the right to appeal this decision. Any appeal from this decision must be filed on or before [DATE] to be timely.

(11) Claimant received all but one of the May 2018 administrative decisions. On May 30, 2018, claimant had a phone call with the Department during which the Department confirmed claimant's address and notified her that an administrative decision mailed to her earlier that month had been returned to the Department but was being re-mailed to her.

(12) Decision # 164549 became final on June 4, 2018 without claimant having filed a timely request for hearing. Decision # 71121 became final on June 5, 2018. Decision # 72709 became final on June 6, 2018. Decision # 132859 became final on June 11, 2018. Decisions # 72437 and # 71939 became final on June 12, 2018. Also in June 2018, the Department began mailing claimant monthly billing statements; at the time of the hearing, the Department had continued to bill claimant on a monthly basis from June 2018 through February 2019.

(13) In July 2018, claimant requested reopening of the fraud case from February 2018, received notice of an ALJ order denying her request, and filed an application for review of that order with the Employment Appeals Board (EAB). In August 2018, claimant again failed to attend a hearing on the fraud matter and an ALJ dismissed her reopen request. In September and October 2018, claimant filed more requests and applications in the fraud case and attended a hearing. In early November 2018, claimant filed another application for review in that case.

(14) In December 2018, claimant was readmitted to the hospital for another surgery. On December 15, 2018, claimant was discharged from the hospital. After that date, she received outpatient therapy and was not an inpatient in any facility. She, with the assistance of her 16-year old son, paid bills and went through things that had accumulated while she had been an inpatient receiving treatment and rehabilitation.

(15) In early January 2019, claimant had a protracted conversation with a Department employee about her claim after which she better understood the eleven decisions at issue in these cases and how to appeal them. On January 3, 2019, claimant filed late requests for hearing on decisions # 84003, 75720, 95943, 85052, 91101. On January 4, 2019, claimant filed a petition for judicial review with the Oregon Court of Appeals, requesting review of EAB's decision affirming denial of her request to reopen the fraud case.

(16) On January 9, 2019, ALJ Kangas issued notice of five orders, each dismissing one of claimant's late requests for hearing subject to claimant's right to renew the late requests by responding to an appellant questionnaire by January 23, 2019. Order No. 19-UI-122328 dismissed claimant's late request for hearing on decision # 84003. Order No. 19-UI-122331 dismissed claimant's late request for hearing on decision # 75720. Order No. 19-UI-122332 dismissed claimant's late request for hearing on decision # 95943. Order No. 19-UI-122333 dismissed claimant's late request for hearing on decision # 85052. Decision # 19-UI-122334 dismissed claimant's late request for hearing on decision # 91101.

(17) On January 15, 2019, claimant filed late requests for hearing on decisions # 71121, 164549, 72709, 132859, 72437, 71939. On January 16, 2019, claimant responded to all five appellant questionnaires. On January 23, 2019, the Office of Administrative Hearings (OAH) mailed five letters stating that Order Nos. 19-UI-122328, 19-UI-122331, 19-UI-122332, 19-UI-122333, and 19-UI-122334 were canceled. On January 24, 2019, OAH mailed notice of hearings on claimant's eleven late requests for hearing, all scheduled for February 8, 2019.

(18) On February 8, 2019, ALJ Meerdink conducted two consolidated hearings. On February 11, 2019, the ALJ issued eleven orders, each dismissing one of claimant's late requests for hearing. Order No. 19-UI-124370 dismissed claimant's late request for hearing on decision # 84003. Order No. 19-UI-124371 dismissed claimant's late request for hearing on decision # 75720. Order No. 19-UI-124373 dismissed claimant's late request for hearing on decision # 95943. Order No. 19-UI-124374 dismissed claimant's late request for hearing on decision # 85052. Order No. 19-UI-124375 dismissed claimant's late request for hearing on decision # 91101. Order No. 19-UI-124376 dismissed claimant's late request for hearing on decision # 71121. Order No. 19-UI-124378 dismissed claimant's late request for hearing on decision # 164549. Order No. 19-UI-124379 dismissed claimant's late request for hearing on decision # 72709. Order No. 19-UI-124380 dismissed claimant's late request for hearing on decision # 132859. Order No. 19-UI-124381 dismissed claimant's late request for hearing on decision # 72437. Order No. 19-UI-124382 dismissed claimant's late request for hearing on decision # 71939.

(19) On February 15, 2019, claimant filed timely applications for review on all eleven orders.

CONSOLIDATION: Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders 19-UI-124370, 19-UI-124371, 19-UI-124373, 19-UI-124374, 19-UI-124375, 19-UI-124376, 19-UI-124378, 19-UI-124379, 19-UI-124380, 19-UI-124381, and 19-UI-124382. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2019-EAB-0177, 2019-EAB-0178, 2019-EAB-0179, 2019-EAB-0180, 2019-EAB-0181, 2019-EAB-0182, 2019-EAB-0183, 2019-EAB-0184, 2019-EAB-0185, 2019-EAB-0186, and 2019-EAB-0187).

WRITTEN ARGUMENT: EAB received and reviewed claimant's written arguments in this matter, which primarily address the Department's efforts to collect claimant's overpayments through wage and tax refund garnishments, and her request for a waiver of the overpayments. EAB's jurisdiction in these matters relates only to claimant's late requests for hearings about her eligibility for benefits during the weeks at issue and the existence and type of the overpayments the Department alleges. We do not have jurisdiction over the merits of those issues, nor do we have jurisdiction over the waiver requests. It appears on the face of claimant's argument that she has provided EAB and the Department with the same waiver request information; unless and until the Department issues one or more administrative decisions addressing claimant's requests, which are appealed to EAB, claimant must continue to address any questions she has about her waiver request(s) directly to the Department.

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

ORS 657.269 provide that parties have 20 days from the date the Department issues an administrative decision to file a request for 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(1) defines “good cause” as “an excusable mistake or [] factors beyond an applicant’s reasonable control.” OAR 471-040-0010(3) defines “a reasonable time” as “seven days after the circumstances that prevented a timely filing ceased to exist.”

There can be no reasonable dispute that claimant’s health condition between November 2017 and January 2018, including multiple hospitalizations and long periods in rehabilitation, impaired claimant’s ability to file timely requests for hearing of the five administrative decisions the Department issued in December 2017, thus establishing that she had good cause to miss the filing deadlines in those cases. By January 2018, however, claimant was dealing with her mail with the help of her son and neighbor. She was also responding with detailed information and pay stubs to a Department questionnaire. By February 2018, claimant was tracking her unemployment insurance claim as demonstrated by her timely filing of a request for hearing in the fraud case. The circumstances that prevented claimant from filing timely requests for hearing on the Department’s December 2017 administrative decisions therefore appear to have ceased to exist, or lessened to the point that she was capable of handling her personal business matters for a few months, by approximately February 2018. Claimant did not file her late requests for hearing until January 2019, almost a year later. Claimant’s late requests for hearing on the Department’s December 2017 administrative decisions therefore were not filed within the seven-day reasonable time period allowed.

The record suggests that claimant’s health problems worsened again between approximately mid-2018 and August 2018, causing her to fail to appear at hearings in the fraud case. Likewise, we infer that those same health problems likely affected her ability to file timely requests for hearing on the six additional administrative decisions the Department issued in May 2018. The effect claimant’s health had on her ability to attend to personal business like her unemployment claim in the last half of 2018 is unclear because although the health issues appear to have been ongoing throughout that period, claimant has, since the beginning of her health problems, received her mail and attended to her bills and personal business with the help of her son and neighbor. She has provided detailed information and testimony about other aspects of her claim periodically since January 2018. Nonetheless, it appears more likely than not that claimant’s poor health and hospitalization in May 2018 had some effect on her ability to manage her personal business for a few months, and thus were factors beyond her reasonable control that prevented her from filing timely requests for hearing on the Department’s May 2018 decisions.

Between August and November 2018, after receiving the six administrative decisions the Department issued to her in May 2018, claimant had recovered her health to the point that she was filing requests to reopen, attending a hearing, and filing applications for review in the fraud case. All of those activities suggest that claimant had regained her physical and mental ability to pursue her unemployment insurance appeals, and although she remained affected by her health issues she was not prevented by her health or other factors beyond her control from dealing with matters related to her unemployment insurance claim. It is therefore more likely than not that the circumstances that had prevented claimant from filing timely requests for hearing on the six administrative decisions the Department issued in May 2018 ceased to exist by November 2018 at the latest. Claimant waited until January 2019 to file her late requests for hearing, over a month later. Claimant’s late requests for hearing on the Department’s May 2018 administrative decisions therefore were not filed within the seven-day reasonable time period allowed after the circumstances that prevented timely filing ceased to exist.

Finally, claimant testified at the hearing that another factor that caused her to file her late requests for hearing when she did on January 3, 2019 was that it was “overwhelming” and she “didn’t understand that all these – there were so many different cases, either. I thought it was just one thing until I started reading like it’s for different – when I talked to Unemployment they explained to me that it’s different hearings. It’s not like one case. I didn’t know there were so many different things that had piled up. So I was completely confused about that. That’s the main reason.” February 8, 2019 8:15 a.m. hearing, Transcript at 30. To the extent claimant failed to file timely requests for hearing, or delayed filing her late requests for hearing in these eleven cases until after the seven-day “reasonable time” filing period had expired because she was overwhelmed or did not understand the implications of the decisions she received – despite being demonstrably physically and mentally capable of filing requests to reopen and applications for review during the same period – claimant did not show good cause.

As a preliminary matter, all of the decisions underlying these cases plainly informed claimant that she was denied benefits and/or was overpaid benefits. They all plainly stated that if claimant disagreed with each decision she had to appeal by the date specified in each decision, and each decision included appeal rights and enclosures instructing her how to appeal. At least five of the administrative decisions, those issued in December 2017, specifically said that each of the decisions must be appealed separately. The other six administrative decisions, those issued in May 2018, each advised claimant of a separate debt she was liable to repay the Department. Moreover, claimant pursued an administrative decision related to the fraud case separately, suggesting that she subjectively understood at some point during the time frame involved in these cases that she had more than “one case” with the Department and that she needed to separately request hearings to appeal them. In that context, the record fails to show the basis upon which claimant came to believe that the eleven decisions were for “one case” instead of “different things,” or that such a belief was a factor beyond her reasonable control that prevented her from acting faster with respect to filing the late requests for hearing in these cases.

Notwithstanding claimant’s circumstances, generally speaking parties to unemployment insurance cases often reasonably or logically believe that separate administrative decisions involve only “one case,” that is, whether or not they will receive benefits. As a result, we have generally observed that parties regularly fail to understand the implications of, for example, receiving eleven different administrative decisions from the Department. Such a misunderstanding might certainly be understandable under many circumstances. However, even if we had concluded that this claimant had shown she misunderstood that she only had “one case” with the Department, or that she had shown a basis for misunderstanding the implications of the eleven administrative decisions issued to her in December 2017 and May 2018, the outcome of this case would remain the same. OAR 471-040-0010(1)(b)(B) specifically states that “[g]ood cause does not include . . . [n]ot understanding the implications of a decision or notice when it is received.” Therefore, to the extent claimant’s failure to understand the implications of receiving eleven different decisions, or to understand the implications of each of the decisions she received, that circumstance is specifically excluded from constituting good cause for late requests for hearing.

For the reasons explained, claimant did not show good cause to extent the filing periods in these cases a reasonable time. Her late requests for hearing are, therefore, dismissed.

DECISION: Orders No. 19-UI-124370, 19-UI-124371, 19-UI-124373, 19-UI-124374, 19-UI-124375, 19-UI-124376, 19-UI-124378, 19-UI-124379, 19-UI-124380, 19-UI-124381, and 19-UI-124382 are affirmed.

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

DATE of Service: March 13, 2019

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.