

# **EMPLOYMENT DEPARTMENT**

## **DIVISION 40**

### **APPEALS**

#### **Lower Appeals Procedure**

**471-040-0010**

#### **Late Request for Hearing**

(1) "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control.

(a) Good cause includes but is not limited to:

(A) Failure to receive a document because the Employment Department or Office of Administrative Hearings mailed it to an incorrect address despite having the correct address;

(B) For telephone hearings, unanticipated, and not reasonably foreseeable, loss of telephone service.

(b) Good cause does not include:

(A) Failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal;

(B) Not understanding the implications of a decision or notice when it is received.

(2) Notwithstanding section (1) of this rule, good cause for failing to file a timely request for hearing shall exist when the appellant provides satisfactory evidence that the Employment Department failed to follow its own policies with respect to providing service to a limited English proficient person, including the failure to communicate orally or in writing in a language that could be understood by the limited English proficient person upon gaining knowledge that the person needed or was entitled to such assistance.

(3) "A reasonable time," is seven days after the circumstances that prevented a timely filing ceased to exist.

(4) The appellant shall set forth the reason(s) for filing a late request for hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for the late filing, and whether the request was filed within a reasonable time.

(5) Nothing in subsection (4) of this rule prevents the OAH from scheduling a hearing if in the sole judgment of the OAH testimony is required.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.875

Hist.: 1DE 150, f. & ef. 2-9-76; ED 10-2006(Temp), f. & cert. ef. 9-27-06 thru 3-21-07; ED 12-2006, f. 12-1-06, cert. ef. 12-3-06

#### **471-040-0040**

#### **Reopening of a Hearing**

(1) After service of an administrative law judge's written decision as set forth in ORS 657.270, an administrative law judge may reopen the hearing if the party:

(a) Requesting the reopening failed to appear at the hearing;

(b) Files in writing, within 20 days of the date of mailing of the hearing decision, a request to reopen; and

(c) Has good cause for failing to appear at the hearing.

(2) "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control.

(a) Good cause includes but is not limited to:

(A) Failure to receive a document because the Employment Department or Office of Administrative Hearings mailed it to an incorrect address despite having the correct address;

(B) For telephone hearings, unanticipated, and not reasonably foreseeable, loss of telephone service.

(b) Good cause does not include:

(A) Failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal;

(B) Not understanding the implications of a decision or notice when it is received.

(3) The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing.

(4) The administrative law judge's ruling on a request to reopen the hearing shall be in writing and mailed to the parties.

(5) The filing date for a request to reopen shall be determined under OAR 471-010-0040.

(6) The OAH will treat as a request to reopen the hearing any application for review that a party files with the Employment Appeals Board or the Employment Department, where the filing party failed to appear at the hearing that led to the decision on appeal, unless the applicant specifically states in the application that the applicant does not wish to have the case reopened. In the event that the OAH subsequently denies the request to reopen the hearing, it shall return the case to the Employment Appeals Board, which will then proceed to review the merits of the substantive decision. The original application for review shall serve as the basis for the Employment Appeals Board's review of the merits of that decision.

(7) Nothing in subsection (3) of this rule prevents the OAH from scheduling a hearing if in the sole judgment of the OAH testimony is required.

(8) This rule is effective for all requests to reopen filed after the effective date of this rule.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.280, 657.610 & 657

Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 153, f. 12-23-77, ef. 1-1-78; ED 3-1999, f. 6-29-99, cert. ef. 7-4-99; ED 2-2004(Temp), f. 5-3-04, cert. ef. 5-4-04 thru 10-31-04; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 10-2006(Temp), f. & cert. ef. 9-27-06 thru 3-21-07; ED 12-2006, f. 12-1-06, cert. ef. 12-3-06

#### **471-040-0041**

#### **Late Request to Reopen**

(1) The period within which a party may request reopening may be extended if the party requesting reopening:

(a) Has good cause for failing to request reopening within the time allowed; and

(b) Acts within a reasonable time.

(2) "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control.

(a) Good cause includes but is not limited to:

(A) Failure to receive a document because the Employment Department or Office of Administrative hearings mailed it to an incorrect address despite having the correct address;

(B) For telephone hearings, unanticipated, and not reasonably foreseeable, loss of telephone service.

(b) Good cause does not include:

(A) Failure to receive a document due to not notifying the Employment Department or Office of Administrative Hearings of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal;

(B) Not understanding the implications of a decision or notice when it is received.

(3) "A reasonable time," is seven days after the circumstances that prevented a timely filing ceased to exist.

(4) The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time.

(5) The filing date for a late request to reopen shall be determined under OAR 471-010-0040.

(6) Nothing in subsection (4) of this rule prevents the OAH from scheduling a hearing if in the sole judgment of the OAH testimony is required.

(7) The administrative law judge's decision on a late request to reopen shall be in writing and mailed to the parties.

(8) This rule is effective for all late requests to reopen filed after the effective date of this rule.

Stat. Auth.: ORS 657.270, 657.875

Stats. Implemented: ORS 657.280, 657.610 & 657.875

Hist.: ED 10-2006(Temp), f. & cert. ef. 9-27-06 thru 3-21-07; ED 12-2006, f. 12-1-06, cert. ef. 12-3-06