

## EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0424

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On November 22, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not eligible for benefits during the weeks of July 7, 2013 through October 19, 2013 because he did not file his claim in accordance with Department rules (decision # 103721). On December 12, 2013, decision # 103721 became final without a request for hearing having been filed.. On December 28, 2013, claimant filed a late request for hearing. On January 8, 2014, ALJ Kangas issued Hearing Decision 14-UI-08168, dismissing claimant's request for hearing as untimely, subject to claimant's "right to renew" the request by submitting a response to the "Appellant Questionnaire" attached to the hearing decision within 14 days of the date the decision was mailed.<sup>1</sup> On January 28, 2014, the Office of Administrative Hearings (OAH) received claimant's response. On February 13, 2014, OAH issued a letter entitled, "Cancellation of Hearing Decision." On March 3, 2014, ALJ Micheletti conducted a hearing at which claimant appeared and testified, and issued Hearing Decision 14-UI-11530, re-dismissing claimant's request for hearing as untimely. On March 19, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant's wife, who is not claimant's designated representative and was not a witness at the hearing, submitted a written argument on claimant's behalf in which she presented new information about the circumstances that led to claimant's late filing of his request for a hearing. She did not show any factors or circumstances that prevented claimant from offering this information from her at hearing, and it is therefore properly excluded from EAB's consideration when reaching this decision. *See* ORS 657.275(2); OAR 471-041-0090 (October 29, 2006). Even considering this new information, it merely asserts that reviewing claimant's mail was not a "priority" in claimant's household, that claimant was not alerted to expect any mail from the Department, and that the holiday season between Thanksgiving and Christmas 2013 distracted claimant and his wife from reviewing claimant's mail. Written Argument at 1. Claimant testified that, regardless of travelling to Pennsylvania, he was at his home, which was the

<sup>1</sup> Hearing Decision 14-UI-08168.

address to which the Department mailed the November 22, 2013 administrative decision, from November 27, 2013 to November 29, 2013, from December 6, 2013 to approximately December 9, 2013 and from approximately December 24, 2013 until he filed his request for a hearing on December 28, 2013. Audio at ~8:29, ~9:05, ~9:38. We agree with the ALJ that a reasonable person who had filed a claim for unemployment benefits would have anticipated the possibility of receiving mail from the Department about his claim even if he was not specifically notified to expect it, and would have taken at least some steps to ensure that any such mail he received at his home address was forwarded to him in Pennsylvania. We also agree that a reasonable person would have taken the time to review his mail during the short periods when he was at home to determine if he had received any time-sensitive correspondence that needed action. We further agree with the ALJ that ignoring one's mail for over five weeks, even if those weeks fell over the holidays, is a very long period of time and is not the sort of inadvertent lapse or error that constitutes an excusable mistake. Accordingly, we agree with the ALJ's ultimate conclusion that claimant's request for hearing must be dismissed as untimely because claimant did not establish that his late filing was due to either an excusable mistake or factors beyond claimant's reasonable control. *See* OAR 471-040-0010(2) (February 10, 2012).

**DECISION:** Hearing Decision 14-UI-11530 is affirmed.

Tony Corcoran and D. E. Larson;  
Susan Rossiter, not participating.

**DATE of Service:** April 2, 2014

**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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.