

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1498

Affirmed
Request for Hearing Dismissed

PROCEDURAL HISTORY: On July 9, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 133346). On July 29, 2014, decision # 133346 became final without a request for hearing having been filed. On July 30, 2014, the employer filed a late request for hearing by fax. On August 19, 2014, ALJ R. Frank conducted a hearing, and on August 27, 2014 issued Hearing Decision 14-UI-24146, dismissing the employer's request for hearing. On September 16, 2014, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision. Even if we had, however, the outcome of this decision would remain the same. The employer argued that it "filed a timely appeal by faxing the document through their automated system on July 29, 2014. The fax was sent timely." However, OAR 471-040-0005(4)(c) provides that the filing date of a request for hearing filed by fax "shall be the encoded date on the fax document." In this case, it is undisputed that the encoded date on the employer's faxed hearing request is July 30, 2014, making the employer's request *untimely*, despite the employer's unsuccessful attempts to file a timely request. In all other respects, we agree with the ALJ that the employer failed to show that factors or circumstances beyond its reasonable control or an excusable mistake justifies extending the filing period in this case.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 14-UI-24146 is affirmed.

Tony Corcoran and J. S. Cromwell;
Susan Rossiter, not participating.

DATE of Service:

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 court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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