

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0447**

*Adopted*  
*Late Request for Hearing Dismissed*  
*Disqualification*

**PROCEDURAL HISTORY:** On November 24, 2014, the Oregon Employment Department (the Department) served two notices of two administrative decisions, one concluding that the Confederated Tribes of Grand Ronde suspended claimant for misconduct on October 23, 2014 (decision # 145920) and the other concluding the same employer discharged claimant for misconduct on November 4, 2014 (decision # 151249). Claimant filed a timely request for hearing on decision # 151249. However, on November 24, 2014, decision # 145920 became final without claimant having requested a hearing on that decision.

On December 31, 2014, ALJ Murdock conducted a hearing on decision # 151249, and on January 2, 2015 issued Hearing Decision 15-UI-31237, concluding claimant's discharge was not for misconduct. On January 22, 2015, Hearing Decision 15-UI-31237 became final without an application for review having been filed with the Employment Appeals Board (EAB).

On January 22, 2015, claimant filed a late request for hearing on decision # 145920. On February 3, 2015, ALJ Kangas issued Hearing Decision 15-UI-32842, dismissing claimant's request subject to his "right to renew" the request by responding to an appellant questionnaire within 14 days of the date the decision was mailed. On February 17, 2015, the Office of Administrative Hearings (OAH) received claimant's response. On March 2, 2015, ALJ Kangas issued Hearing Decision 15-UI-34333, re-dismissing claimant's request for hearing. On March 31, 2015, ALJ Kangas issued an amended order, Hearing Decision 15-UI-36008, re-dismissing claimant's request for hearing. On April 17, 2015, claimant filed a timely application for review of Hearing Decision 15-UI-36008 with EAB.

With his application for review, claimant filed a written argument. Claimant did not certify that he provided a copy to the other parties to this case, as required by OAR 471-041-0080(2)(a) (October 29,

2006).<sup>1</sup> Therefore, EAB cannot consider claimant's argument. Even if we could, however, the outcome of this decision would remain the same, for the reasons that follow.<sup>2</sup>

Claimant's principal argument was that, although he did not appeal the decision denying him benefits based on his October 23<sup>rd</sup> suspension from the Confederated Tribes of Grand Ronde, he should not have to because the "suspension had nothing to do with the fact that I was fired and I do not see how or why it is holding up access to my benefits." We agree with claimant that it does not appear that his suspension has anything to do with his subsequent discharge from employment, and we also agree with claimant that his Department records show that he is not disqualified from receiving benefits because of his discharge from work. However, claimant's suspension from work has formed a separate reason for his disqualification from benefits that is completely independent of the discharge. While claimant is *not* disqualified from benefits because of his discharge, he *is* disqualified from benefits based on the suspension.

Claimant's suspension from work was reported to the Department, and, according to decision # 145920, the Department concluded that the suspension was a disqualifying event, separate from his discharge. ORS 657.176(2) provides that individuals may be disqualified from receiving benefits solely because of a suspension from work. Decision # 145920, without reference to claimant's discharge from the same job, states at the top of page 2 that, because of claimant's suspension for misconduct,

**Therefore, BENEFITS ARE DENIED** for a period beginning October 19, 2014 and until the claimant has earned and received remuneration from employment . . . in an amount at least equal to four times the weekly benefit amount subsequent to the week in which the separation occurred.

When someone is disqualified from receiving benefits because of a disqualifying event like claimant's suspension for misconduct, he must do something to end the disqualification before he can again receive benefits. In other words, regardless of claimant's discharge, the suspension, which the Department concluded was for misconduct, disqualifies claimant from benefits starting October 19, 2014. The disqualification from benefits continues until claimant earns four times his weekly benefit amount, regardless how long it takes for him to earn that amount.

Thus, Decision # 145920 described to claimant what consequences he would experience based on his suspension for misconduct, and did so without making any reference to his disqualification being contingent on any other decision the Department reached about his benefits. The decision also informed claimant of his appeal rights if he disagreed with the Department's decision to disqualify him from benefits based on the suspension, and instructed him to contact the Unemployment Insurance Center if he did not understand the decision.

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<sup>1</sup> OAH provided claimant with notice of the rule requiring parties to provide copies of their arguments to the opposing party on the "Rights of Review" document included with his hearing decision. EAB also notified claimant of the same rule on the "Notice of Receipt of Application for Review" document mailed to claimant on April 21, 2015.

<sup>2</sup> Although we may not consider claimant's written argument when reaching our decision, we are addressing some of the arguments here for the sole purpose of providing information to claimant about the reason for his ongoing disqualification from benefits. If claimant would like additional information about his disqualification from benefits, or would like information about how to end his disqualification, he should contact his unemployment insurance center at (877) 345-3484.

**FINDINGS OF FACT:** Claimant did not file a timely request for hearing on decision # 145920 because he did not understand that he would be disqualified from future unemployment insurance benefits because of it.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant did not show good cause for filing a late request for hearing on decision # 145920.

ORS 657.269 gives parties a 20-day period in which to file a timely request for hearing on an administrative decision. ORS 657.875 provides that the filing period may be extended if the party shows "good cause" for doing so. OAR 471-040-0010(1) defines good cause to include "when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control." OAR 471-040-0010(1)(b)(B) specifically states that good cause does *not* include "[n]ot understanding the implications of a decision or notice when it is received."

In this case, there is no dispute that claimant chose not to file a timely request for hearing on decision # 145920 because he did not understand that the decision "was going to hold up my benefits," and would have "addressed it much sooner" had he realized it would. DR Exhibit 3 (answer to appellant questionnaire item #6). Claimant's failure to understand the implications of decision # 145920 is not good cause to extend the filing period.

Because claimant did not show good cause for filing a late request for hearing, his request is dismissed. Decision # 145920, disqualifying claimant from benefits from October 19, 2014 until such time as he has ended the disqualification by earning four times his weekly benefit amount from work in subject employment, remains undisturbed.

**DECISION:** Hearing Decision 15-UI-36008 is affirmed.

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

**DATE of Service:** April 22, 2015

**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](http://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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