

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0758**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On March 27, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 73216). On April 9, 2015, the Department issued a corrected decision to the parties, with the same issue date and decision number. On April 16, 2015, decision # 73216 became final without a request for hearing having been filed. On April 28, 2015, the employer filed a late request for hearing. On May 7, 2015, ALJ Kangas issued Hearing Decision 15-UI-38085, dismissing the employer's request subject to its right to renew its request if the employer filed its response to an appellant questionnaire within 14 days of the date the decision was mailed. On May 11, 2015, the employer filed a timely response. On May 13, 2015, the Office of Administrative Hearings mailed a letter canceling Hearing Decision 15-UI-38085. On May 28, 2015, ALJ R. Frank conducted a hearing, and on June 5, 2015, issued Hearing Decision 15-UI-39632, re-dismissing the employer's late request for hearing. On June 22, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Although notice of the Department's March 27, 2015 decision was mailed to the employer's address of record, the employer did not receive it. On April 12, 2015, the employer received its copy of the corrected decision. The corrected version of the decision stated,

THIS DECISION CORRECTS THE ADMINISTRATIVE DECISION ISSUED March 27, 2015

NOTE – The prior decision which this order corrects remains in full force and effect. This correction, issued April 9, 2015, addresses matters such as spelling or other similar nonsubstantive clerical errors and does not affect the prior outcome of the case. **The date by which any appeal must be filed remains unchanged from the prior decision.**

(Emphasis added.) The corrected version of the decision also stated,

Date Mailed: March 27, 2015.

The corrected version of the decision included a tear-off request for hearing form. Under the heading "**IMPORTANT INFORMATION**," the form stated, in pertinent part,

Mail or fax this form to the Office of Administrative Hearings by the date stated on the administrative decision.

(Emphasis in original.) An information sheet included with the corrected version of the decision indicated that the request for hearing had to be filed within 20 days of the date of the administrative decision.

(2) On April 23, 2015, the employer's representative signed the request for hearing tear-off form. On April 28, 2015, the employer faxed the request for hearing to OAH.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that the employer's late request for hearing should be dismissed.

ORS 657.269(2) provides that a request for hearing must be filed within 20 days after the administrative decision was mailed. ORS 657.875 provides that the filing period may be extended a reasonable time upon a showing of good cause. OAR 471-040-0010 defines "good cause" as an excusable mistake or factors beyond an applicant's reasonable control, and defines "a reasonable time" as seven days after the circumstances that prevented a timely filing ceased to exist.

The employer did not establish that factors or circumstances beyond its control prevented it from filing a timely request for hearing. Although the employer did not receive the original decision the Department had mailed to it on March 27, 2015, it received the corrected version by April 12, 2015, four days before the request period expired. The employer did not establish the existence of any factor or circumstances beyond its reasonable control that prevented it from filing the request for hearing within those four days.

The employer filed a late request for hearing because of a mistaken belief that the employer had 20 days from the date the corrected version of the decision was mailed, April 9, 2015, to file the hearing request, and filed its request within that time period, making the request timely. However, the employer did not establish that its mistake was excusable. The employer was understandably confused by the ambiguous information provided in the materials mailed April 9th concerning the due date of its request for hearing. However, it is notable that the paragraph the employer relied upon to establish that the date the correction was issued was April 9th also specifically stated that the date by which any appeal had to be filed had not been changed from the prior decision which had been issued March 27, 2015. Given that the employer was provided with the date of the original decision and notified that the hearing request due date had not changed because the decision was re-issued, the employer's calculation of the due date based on the corrected decision issue date was contrary to the information it had received, and cannot be considered an excusable mistake.

For the foregoing reasons, we agree with the ALJ that the employer's request for hearing is dismissed. Decision # 73216 remains undisturbed.

**DECISION:** Hearing Decision 15-UI-39632 is affirmed.

J. S. Cromwell and D. P. Hettle, *pro tempore*;  
Susan Rossiter, not participating.

**DATE of Service: June 29, 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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