

EMPLOYMENT APPEALS BOARD DECISION
2015-EAB-0874

Modified
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On September 26, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$1,286 overpayment, \$385.80 monetary penalty and 10 penalty weeks (decision # 194540). On October 16, 2014, decision # 194540 became final without a request for hearing having been filed. On June 3, 2015, claimant filed a late request for hearing. On June 11, 2015, ALJ Kangas issued Hearing Decision 15-UI-39930, dismissing claimant's request for hearing subject to claimant's right to renew the request by submitting a response to an appellant questionnaire by June 25, 2015. On July 7, 2015, the Office of Administrative Hearings (OAH) received claimant's response. On July 14, 2015, ALJ Kangas mailed a letter to claimant stating that his response was received late, and would not be considered. On July 21, 2015, claimant filed a timely application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Claimant did not receive notice of decision # 194540. In early May 2015 claimant learned of the decision. He waited until June 3, 2015 to request a hearing on it.

(2) On June 19, 2015, EAB received claimant's response to the appellant questionnaire ALJ Kangas mailed him with Hearing Decision 15-UI-39930. On June 25, 2015, EAB transmitted the questionnaire response to OAH.¹ For unknown reasons, OAH appears not to have received claimant's response.²

¹ We take notice of this fact, which is contained in Employment Appeals Board records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

² Claimant's questionnaire response is admitted into evidence in this matter to complete the record, and marked as EAB Exhibit 1. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in evidence.

CONCLUSIONS AND REASONS: Claimant returned his appellant questionnaire response timely, and was entitled to have it considered. Because claimant did not file his late request for hearing within a reasonable time, however, his request should be dismissed.

Late Response to Questionnaire. In a letter decision dated July 14, 2015, ALJ Kangas stated that claimant's July 7, 2015 response to the appellant questionnaire was late, and, therefore, would not be considered. While the ALJ is correct that a response received July 7, 2015 would be late, that is immaterial because claimant had already submitted a timely response to the questionnaire on June 19, 2015, within the time period allowed. Therefore, pursuant to Hearing Decision 15-UI-39930, he is entitled to have the information considered with respect to "determining whether to grant" his late request for hearing.³

Late Request for Hearing. ORS 657.269 provides parties with a 20-day time period to request a hearing on an administrative decision. ORS 657.270(7)(a)(E) provides that a party's request for hearing is subject to dismissal if it is filed late and good cause is not shown. However, ORS 657.875 allows that the time period "may be extended, upon a showing of good cause therefor, a reasonable time under the circumstances of each particular case." 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(3) defines "[a] reasonable time" as "seven days after the circumstances that prevented a timely filing ceased to exist."

Claimant did not file a timely request for hearing in this matter because he did not receive notice of the decision. With his questionnaire, dated June 19, 2015, claimant wrote, "I found out around a month and a 1/2 ago about the 10 week penalty and the \$1700 deduction." In other words, the circumstances that prevented claimant's timely filing in this matter ceased to exist during approximately the first week of May 2015, triggering the seven-day "reasonable time" measurement to begin. Claimant waited until June 3, almost a month after the circumstances ceased, and several weeks after the seven-day "reasonable time" period expired, to file. Because the time period for filing a request for hearing can only be extended a "reasonable time," meaning seven days, and claimant did not file within the seven day period, his late request for hearing must be dismissed.

DECISION: Hearing Decision 15-UI-39930 is modified, as outlined above.

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

DATE of Service: July 23, 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. 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.

³ Hearing Decision 15-UI-39930 at 2.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.