

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0882**

*Affirmed*  
*Late Request to Reopen Denied*

**FINDINGS OF FACT AND PROCEDURAL HISTORY:** On December 24, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 151558). Claimant filed a timely request for hearing. On February 12, 2015, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for February 25, 2015. On February 25, 2015, ALJ Buckley issued Hearing Decision 15-UI-34117, dismissing claimant's hearing request for failure to appear. On March 17, 2015, Hearing Decision 15-UI-34117 became final without claimant having filed a request to reopen.

On May 1, 2015, claimant contacted the Department about decision # 151558. Claimant's contact was erroneously construed as a second request for hearing on decision # 151558. On May 8, 2015, ALJ Kangas issued Hearing Decision 15-UI-38173, dismissing claimant's second request for hearing subject to her right to renew the request by responding to an appellant questionnaire by May 22, 2015. On May 22, 2015, OAH received claimant's response. On June 3, 2015, OAH canceled Hearing Decision 15-UI-38173 and mailed notice of a hearing on claimant's second hearing request, scheduled for June 17, 2015. On June 17, 2015, an ALJ convened a hearing, concluded it was scheduled in error, and closed the hearing. On June 18, 2015, ALJ Kangas mailed a letter to claimant stating that claimant's May 1, 2015 second hearing request was processed in error, closing the case on claimant's second hearing request, and instructing her that, if she wanted to reopen the February 25, 2015 hearing she could submit a reopen request explaining "why you missed your hearing and why you filed your reopen request late."

On June 22, 2015, claimant filed a late request to reopen the February 25, 2015 hearing. On July 9, 2015, ALJ Kangas issued Hearing Decision 15-UI-41257, denying claimant's late request to reopen. On July 22, 2015, claimant filed an application for review of Hearing Decision 15-UI-41257 with the Employment Appeals Board (EAB).

EAB considered claimant's argument to the extent it was relevant and based on the record. However, the only issue at this point is whether claimant had good cause for filing her request to reopen more than 20 days after she missed her February hearing. If claimant cannot show good cause for the late filing, we do not have jurisdiction to consider whether claimant had good cause for missing the hearing itself.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant's late request to reopen must be denied.

ORS 657.270(5) permits parties who failed to appear at the hearing to request to reopen the hearing, and permits the ALJ to do so if, among other things, the party files the request within 20 days of the date of the hearing decision dismissing the hearing request for failure to appear. ORS 657.875 allows the time period for filing the request to be extended "a reasonable time" upon a showing of "good cause" for the late filing. "Good cause" means an excusable mistake or factors beyond the party's reasonable control; "a reasonable time" is seven days after those circumstances ceased to exist. OAR 471-040-0041.

Claimant failed to appear at her February 25, 2015 hearing. The deadline for claimant to have filed her request to reopen was 20 days from that date, which was March 17, 2015. Claimant did not file her request until June 22, 2015, making her request late.<sup>1</sup> In order to have her request to reopen considered, claimant must therefore have shown that she had good cause for the delay in filing her request to reopen, and that her filing occurred within seven days of when the circumstances that caused the late filing ceased. In claimant's request to reopen, she did not provide any information about why she waited from February 25, 2015 until June to request that the hearing be reopened, and did not assert or show that her late request occurred within seven days of the date that whatever circumstances that had prevented her timely filing ceased. For those reasons, we must conclude that claimant did not establish "good cause" for filing a late request to reopen, or establish that the late filing occurred within a "reasonable time." Therefore, her request must be denied.

**DECISION:** Hearing Decision 15-UI-41257 is affirmed.

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

**DATE of Service:** July 28, 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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<sup>1</sup> To any extent claimant's May 1, 2015 "second" request for hearing can or should be construed as a request to reopen, the outcome of this decision would remain the same. First, the request would still have been late, second, it was defective because the request was not made in writing, and third, it did not include a statement explaining the reason claimant did not attend the February 25, 2015 hearing.