

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-0996**

*Reversed*  
*Late Request for Hearing Allowed*  
*Hearing on Decision # 141437 is Required*

**PROCEDURAL HISTORY:** On February 25, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from November 16, 2014 to January 24, 2015 (decision # 141437). Decision # 141437 became final on March 17, 2015 without a request for hearing having been filed. On June 25, 2015, claimant filed a late request for hearing by fax. On July 1, 2015, ALJ Kangas issued Hearing Decision 15-UI-40955, dismissing claimant's request for hearing subject to his right to renew the request by responding to an appellant questionnaire by July 15, 2015. On July 13, 2015, the Office of Administrative Hearings (OAH) received claimant's response. On July 22, 2015, OAH mailed a letter to claimant canceling Hearing Decision 15-UI-40955. On August 7, 2015, ALJ Shoemake conducted a hearing, and on August 10, 2015 issued Hearing Decision 15-UI-42775, dismissing claimant's late request for hearing. On August 19, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) The Department mailed notice of decision # 141437 to claimant at his address of record. The decision was not returned to the Department by the United States Postal Service as undeliverable. Claimant did not receive it.

(2) Prior to this matter, claimant had no known problems receiving mail at his address. Claimant's girlfriend customarily collected their mail from a locked post office box every other day, and gave claimant's mail to him, especially if it related to his unemployment. Prior to this matter, claimant had not missed receiving pieces of mail because of the manner in which his girlfriend collected and distributed his mail. Claimant had not had problems receiving other mail from the Department.

(3) Claimant learned of the existence on June 25, 2015 when he received notice of an overpayment decision based on decision # 141437. Claimant filed his request for hearing on decision # 141437 the same day.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that claimant showed good cause to extend the filing period in this matter, and are entitled to a hearing on decision # 141437.

ORS 657.269 requires that a party file a request for hearing on an administrative decision within 20 days of the date the decision was mailed. ORS 657.875 allows the 20-day filing period to be extended a "reasonable time" upon a showing of "good cause." A "reasonable time" means seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0010(3). "Good cause" means when a delay "arises from an excusable mistake" or "factors beyond an applicant's reasonable control." OAR 471-040-0010(1).

In Hearing Decision 15-UI-42775, the ALJ concluded that claimant did not have good cause for filing a late request for hearing based on his assertion that he did not receive it, because "[c]laimant's assertion alone of non-receipt of the administrative decision is not sufficient to" overcome the presumption that a letter duly directed and mailed to an individual was received in the regular course of mail. Hearing Decision 15-UI-42775 at 3. Although we agree with the ALJ that the law presumes that documents sent through the U.S. Postal Service are received by the addressee, subject to evidence, even circumstantial, of non-receipt. OAR 137-003-0520(10).

Claimant had no history of problems receiving mail, and had a locked mailbox. Only one person, his girlfriend, was responsible for checking mail; she did so every other day, and she was diligent about giving claimant his mail, especially mail regarding his unemployment. Claimant's circumstantial evidence of non-receipt was based on personal knowledge, was not implausible, and shows that he and his girlfriend were, typically, diligent in their attendance to unemployment insurance matters. Given those factors, and claimant's immediate attention to this matter when he became aware that decision # 141437 existed, it is more likely than not that claimant would have filed a timely request for hearing had he received the decision. We conclude that the evidence is sufficient to show that, more likely than not, claimant did not receive the administrative decision mailed to him. Therefore, his failure to file a timely request for hearing in the matter was the result of circumstances beyond his reasonable control.

Claimant has shown good cause for filing a late request for hearing. Claimant filed his late request for hearing on decision # 141437 the same day he discovered it existed, which satisfies the requirement that he file his late request within a "reasonable time." Claimant's late request for hearing is, therefore, allowed, and he is entitled to a hearing on the merits of decision # 141437.

**DECISION:** Hearing Decision 15-UI-42775 is set aside, as outlined above.<sup>1</sup>

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

**DATE of Service:** August 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

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<sup>1</sup> NOTE: The failure of any party to appear at the hearing OAH schedules on the merits of decision # 141437 will not reinstate Hearing Decision 15-UI-42775 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

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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