

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1199**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On June 25, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 152449) concluding claimant was not available for work during the weeks of December 14, 2014 through January 3, 2015 (weeks 51-14 through 53-14). On July 15, 2015, decision # 152449 became final without a request for hearing having been filed. On August 5, 2015, the Department served notice of an administrative decision (decision # 90124) concluding claimant was overpaid \$948 in benefits based on decision # 152449. On August 15, 2015, claimant filed an untimely request for hearing on decision # 152449 and a timely request for hearing on decision # 90124. On September 9, 2015, claimant withdrew her request for a hearing on decision # 90124. On September 10, 2015, ALJ Frank conducted a hearing, and on September 14, 2014 issued Hearing Decision 15-UI-44277, dismissing as untimely claimant's request for hearing on decision # 152449 and leaving decision # 152449 undisturbed. On October 5, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant submitted a written argument but did not certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). In her argument, claimant also presented new information that she did not offer during the hearing. Claimant did not explain why she failed to offer this information or otherwise show as required by OAR 471-041-0090 (October 29, 2006) that factors or circumstances beyond her reasonable control prevented her from doing so. For these reasons, EAB did not consider claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** (1) Sometime before June 24, 2015, claimant was receiving unemployment insurance benefits while working from time to time for a company known as Visiting Angels. Also sometime before June 24, 2015, claimant learned that the Department questioned the earnings she had reported from Visiting Angels during some weeks in which she claimed benefits. Claimant contacted a representative of Visiting Angels for assistance in resolving issues relating to the income she had reported.

(2) Around June 24, 2015, the representative from Visiting Angels sent a letter to claimant letting her know that the Department had agreed that claimant was only required to repay the Department for \$33 in overpaid benefits as result of misreported earnings. On June 24, 2015, a Department representative called claimant and told her the Department was not pursuing a claim against her for willfully misreporting her earnings, which could have led to assessments of monetary and other penalties.

(3) On approximately June 28, 2015, claimant received decision # 151449, which concluded that she was not available for work for certain weeks at issue. Visiting Angels was not a party to that decision and the decision had nothing to do with misreported income during its weeks at issue. When claimant received decision #151449, she read it. Claimant understood that a request for a hearing on that decision needed to be filed by July 15, 2015 to be timely. Claimant did not file a request for hearing by July 15, 2015.

(4) After June 28, 2015, claimant went to the local WorkSource office to obtain more information about decision #151449. Claimant also contacted a Visiting Angels representative about decision #151449.

(5) From June 25, 2015 until sometime shortly after August 5, 2015, claimant did not contact a Department representative at the main claim line about the status of decision #151449. On July 13, 2015, the Department representative assigned to investigate claimant's availability for work received a note from claimant thanking the Department for reducing to \$33 the amount she owed due to underreported earnings.

(6) Sometime shortly after August 5, 2015, claimant received administrative decision # 90124 assessing a \$948 overpayment based on decision # 151449. On August 15, 2015, claimant filed a request for hearing by mail on decision # 151449, which was the basis for decision # 90124.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing on decision #151449 is dismissed and that decision remains undisturbed.

ORS 657.269 requires that a request for hearing be filed within twenty days after the administrative decision is mailed to claimant and, if the request is not filed, the decision becomes final. ORS 657.875 states that the twenty day time limit to file a request for hearing may be extended for a reasonable time upon a showing of good cause for a delay in filing. OAR 471-040-0010(1) (February 2, 2012) defines "good cause" as meaning that the delay in filing or failure to file arose from an excusable mistake or from factors beyond the applicant's reasonable control.

Claimant conceded at hearing that, although she received the administrative decision # 151449 on June 28, 2015 and consciously noted in her mind that a request for hearing needed to be filed by July 15, 2015 if she disagreed with the substance of the decision, she did not timely file the request. Audio at ~16:04, ~16:29, 16:38, 16:42. When questioned about her delay in filing the request for hearing, claimant contended that she did not file the request for hearing by July 15, 2015 because she asked a Visiting Angels representative for assistance in dealing with the Department, and during the interim between receiving that request and the deadline for a timely filing she received a letter from Visiting Angels that led her to believe that a Visiting Angels' representative had resolved matters with the Department arising from decision # 152449. Audio at ~17:36. Claimant apparently did not understand that the issue addressed in decision # 152449 – her availability for work – was separate from the matter

of allegedly misreported earnings and an overpayment that Visiting Angels had resolved with the Department. Under OAR 471-040-0010(1)(b)(B), failure to understand the implications of a decision does not constitute good cause for filing a late hearing request.

Claimant also contended that she contacted her local WorkSource office to obtain more information about decision # 151449 as a justification for her delayed filing of the application for review. Audio at ~18:51. However, claimant did not explain exactly what she was told by the WorkSource representatives in those visits, and did not contend that those representatives told her that she could delay in filing the request for hearing because the local office was taking steps to resolve the outstanding availability issues. “Excusable mistake” under OAR 471-040-0010(1) includes a mistake resulting from reasonable reliance on the accuracy of a Department representative’s advice. *Christopher A. Dent*, 12-AB-2744 (October 18, 2012). Based on this record, we cannot conclude that claimant’s untimely hearing request resulted from her reasonable reliance on advice she received from a Department representative.

Claimant did not show good cause for her delay in filing her request for hearing decision # 151449. Her late request is dismissed.

**DECISION:** Hearing Decision 15-UI-44277 is affirmed and administrative decision # 1511449 remains undisturbed.

Susan Rossiter and J. S. Cromwell.

**DATE of Service: October 26, 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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