

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0003**

*Affirmed*  
*Request to Reopen Denied*

**PROCEDURAL HISTORY:** On September 29, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 105435) concluding that claimant was not able to work from June 30 through July 13, 20133) (weeks 27-13 through 28-13). Claimant filed a timely request for hearing. On October 21, 2015, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for November 4, 2015. On November 4, 2015, ALJ Wyatt issued Hearing Decision 15-UI-47164, dismissing claimant's request for hearing for failure to appear at the hearing. On or before November 19, 2015, claimant received Hearing Decision 15-UI-47164. On November 24, 2015, Hearing Decision 15-UI-47164 became final without a request to reopen or an application for review having been filed. On December 9, 2015, claimant filed an untimely request to reopen. On December 22, 2015, ALJ Kangas issued Hearing Decision 15-UI-49824, dismissing claimant's request to reopen as untimely. On January 4, 2015, claimant filed an application for review with the Employment Appeals Board (EAB).

With his application for review, claimant included an explanation why he did not timely file his request to reopen, an explanation which is not part of the record in this case. Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information if the party providing the information demonstrates that circumstances beyond the party's reasonable control prevented it from presenting the information at a hearing. Claimant offered no reason why he never provided the information he now wants EAB to consider to OAH in his request to reopen. EAB will not therefore consider claimant's new information. Even if we had considered this information, it would not have changed the outcome of our decision. Claimant asserted that he did not timely file his request to reopen because "the letter was mailed to the wrong address and I did not get the information until it was forwarded to my correct address." Assuming that the "letter" to which claimant refers is the hearing decision that dismissed his hearing request for failure to appear at the November 4, 2015 hearing (Hearing Decision 15-UI-47164), the record shows that claimant received this decision on or before November 19, 2015. Direct Review Exhibit 6. The hearing decision clearly advised claimant of his right to request a reopening of his hearing, and also advised him that any request to reopen must be filed within 20 days of the date on which the hearing decision was mailed. We therefore conclude that no delay in receipt of his mail was

responsible for claimant's failure to timely file his request to reopen. We agree with the ALJ's conclusion that claimant failed to demonstrate that any circumstances beyond his reasonable control or excusable mistake constituted good cause for the untimely filing of his request to reopen.

EAB reviewed the entire record in this case. On *de novo* review and pursuant to ORS 657.275(2), Hearing Decision 15-UI-49824 is **adopted**.

**DECISION:** Hearing Decision 15-UI-49824 is affirmed.

Susan Rossiter and J. S. Cromwell

**DATE of Service: January 11, 2016**

**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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