

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0313

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On January 20, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 102053). On February 9, 2016, decision # 102053 became final without the employer having filed a request for hearing.

On February 11, 2016, the employer filed a late request for hearing. On February 17, 2016, ALJ Kangas issued Hearing Decision 16-UI-53137, dismissing the employer's request for hearing subject to the employer's right to renew the request by responding to an appellant questionnaire by March 2, 2016. On February 29, 2016, the Office of Administrative Hearings (OAH) received the employer's response. On March 10, 2016, ALJ Kangas reviewed the employer's response and issued Hearing Decision 16-UI-54817, re-dismissing the employer's late request for hearing. On March 18, 2016, the employer filed an application for review of Hearing Decision 16-UI-54817 with the Employment Appeals Board (EAB).¹

The employer failed to certify that it provided a copy of its argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision.

FINDINGS OF FACT: The only administrative decision involving this claimant and American Campus Communities Services, Inc. was issued on January 20, 2016.² That decision concluded that

¹ The employer's application for review stated that it was requesting review of "form, Hearing Decision, dated March 15, 2016 which allows benefits to" claimant. We have reviewed Department records and found no evidence of a hearing decision issued March 15, 2016, much less one that allowed benefits to claimant. Based on our review of Department records, we have construed the employer's application for review as applying to Hearing Decision 16-UI-54817 which dismissed the employer's late request for hearing, the effect of which was to leave decision # 102053, which allowed benefits to claimant, undisturbed.

² We take notice of Department records concerning these parties. 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

claimant was not disqualified from receiving unemployment benefits. The employer's February 11, 2016 request for hearing stated that it was "in reference to form, Administrative Decision, dated January 22, 2016 which allows benefits to" claimant.

CONCLUSIONS AND REASONS: We agree with the ALJ that the employer's late request for hearing must be dismissed.

ORS 657.269(2) provides that a request for hearing must be filed within 20 days after notice of the Department's administrative decision was issued. ORS 657.270(7)(a)(E) provides that late requests for hearing are subject to dismissal. ORS 657.875 provides that the deadline for filing a request for hearing may be extended a reasonable time upon a showing of good cause. "Good cause" means an excusable mistake or factors beyond an individual's reasonable control, and a "reasonable time" means seven days after the circumstances that caused the late filing ceased to exist. OAR 471-040-0010 (February 10, 2012).

In the employer's request for hearing, the employer claimed that the administrative decision in this case was dated January 22, 2016. Had the administrative decision at issue in this matter actually been dated January 22, 2016, the employer's February 11, 2016 request for hearing would have been timely. However, the employer made a mistake. The administrative decision was dated January 20, 2016, making the deadline for filing a timely request for hearing February 9, 2016, and, as a result, the employer's February 11, 2016 request for hearing was two days late.

It appears more likely than not that the employer filed a late request for hearing based on its belief that the administrative decision was issued two days later than it was. The employer's error was a mistake. However, we cannot conclude that the employer's mistake was excusable in this instance because the employer has not provided any information explaining the circumstances that caused it to make the mistake, much less explaining why the mistake was of the sort that should be excusable. Additionally, because the date the decision was mailed as well as the deadline for timely filing a request for hearing were both plainly printed upon the administrative decision, and the employer has not asserted or shown that it was prevented by any circumstance from filing the request for hearing, we cannot conclude that factors or circumstances beyond the employer's reasonable control caused it to file a late request for hearing.

Because the employer's late request for hearing was not filed because of an excusable mistake or factors or circumstances beyond its reasonable control, we conclude that the employer has not shown good cause for the late filing. The employer's request is, therefore, dismissed. Decision # 102053 remains undisturbed.

DECISION: Hearing Decision 16-UI-54817 is affirmed.

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

decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

DATE of Service: March 23, 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. 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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