

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0436**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On November 20, 2015, the Oregon Employment Department (the Department) served notice of a claim determination. On November 30, 2015, that decision became final without claimant having filed a timely request for hearing. On December 2, 2015, claimant filed a late request for hearing. For reasons unknown, the Office of Administrative Hearings (OAH) did not receive or process her request. On March 7, 2016, claimant re-requested a hearing. On March 10, 2016, ALJ Kangas issued Hearing Decision 16-UI-54770, dismissing claimant's late request for hearing subject to her right to renew the request by responding to an appellant questionnaire by March 24, 2016. On March 13, 2016, OAH received claimant's response. On April 7, 2016, ALJ Kangas issued Hearing Decision 16-UI-56806, re-dismissing claimant's late request for hearing. On April 15, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision.

**FINDINGS OF FACT:** Claimant received the Department's November 20, 2015 decision on November 23, 2015. On December 2, 2015, claimant requested a hearing by fax.

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

ORS 657.266(5) provides that parties may file requests for hearing on claim determinations "not later than 10 days after the date the determination is mailed." In this case, the Department mailed the claim determination to claimant on November 20, 2015. Ten days from November 20, 2015 is November 30, 2015.<sup>1</sup> According to claimant's questionnaire, argument and documentary evidence, however, claimant did not file her request for hearing on the determination until December 2, 2015, making claimant's request for hearing late.

<sup>1</sup> According to Oregon law, the 10-day time period begins on the date the determination was *mailed*, not on the date claimant received it.

ORS 657.875 provides that the period within which claimant may request a hearing may be extended a reasonable time “upon a showing of good cause therefor.” OAR 471-040-0010(1) (February 10, 2012) defines “good cause” to include an “excusable mistake” or “factors beyond an applicant’s reasonable control.” Examples of “good cause” include failure to receive a document or unforeseeable circumstances, and specifically exclude failing to understand the implications of a decision or notice when it is received. *Id.*

Claimant argued that she did not file her request for hearing late, and, therefore, did not provide any specific reasons that prevented her from filing it on time. However, it appears from claimant’s statements that she filed her request for hearing late because she did not understand when the 10-day filing period expired and thought she had additional time. That reason does not constitute “good cause” as it is defined in the administrative rules because determining the filing date by counting 10 days out from the date the decision was mailed, or by contacting the Department to ask that a specific due date be provided, were within claimant’s reasonable control, and although claimant apparently filed her request for hearing late because of a mistake about the deadline, OAR 471-040-0010(1)(b)(B) specifically states that a mistake in understanding the implications of a decision does not constitute good cause. For those reasons, we conclude that claimant’s request for a hearing on the Department’s claim determination was filed late, and that she did not have “good cause” to extend the filing period to December 2, 2015. Claimant’s late request for hearing must, therefore, be dismissed.

**DECISION:** Hearing Decision 16-UI-56806 is affirmed.

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

**DATE of Service:** April 20, 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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