

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0446

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On June 30, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 71653). On July 20, 2015, decision # 71653 became final without a timely request for hearing having been filed. On February 26, 2016, claimant filed a late request for hearing. On March 4, 2016, ALJ Kangas issued Hearing Decision 16-UI-54447, dismissing claimant's request for hearing as untimely subject to claimant's right to renew the request by responding to an appellant questionnaire by March 18, 2016. On March 10, 2016, the Office of Administrative Hearings (OAH) received claimant's response. On March 17, 2016, OAH mailed a letter canceling Hearing Decision 16-UI-54447. On March 18, 2016, OAH mailed notice of a hearing scheduled for March 31, 2016. On March 31, 2016, ALJ Shoemake conducted the hearing, and on April 8, 2016 issued Hearing Decision 16-UI-56857, dismissing claimant's late request for hearing. On April 18, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision. Although claimant disagreed with parts of the hearing decision and argued that he had good cause for filing a late request for hearing on decision # 71653 because he was incarcerated, we agree with the ALJ that claimant's late request for hearing must be denied. In order to be entitled to a hearing on the merits of decision # 71653, claimant must have established that he filed his late request within a "reasonable time." A "reasonable time" is defined as "seven days after the circumstances that prevented a timely filing ceased to exist." OAR 471-040-0010(3). In this case, the circumstances that prevented claimant from filing a timely request for hearing were his incarceration and being unaware of the content of the Department's June 30, 2015 decision until after he was released from incarceration in December 2015. Claimant testified at the hearing that he read the decision "right away" after his release. Audio recording at ~12:30. Therefore, we infer that he read the decision in December 2015, or perhaps in January 2016. Upon reading the decision, claimant knew the Department had denied him benefits, and, because decision # 71653 included information about claimant's appeal rights, a request for hearing form, and instructions about how to file it, he also knew at that time that if he disagreed with that decision he could request a hearing. At that point the circumstances that had prevented claimant from filing a timely request for hearing

ceased to exist. Thereafter, claimant delayed filing his request until late February 2016, a period of approximately one to two months after he learned of the Department's decision. Because that was longer than 7 days, he did not meet the requirement that he file the late request for hearing within a "reasonable time." Therefore, regardless whether claimant's incarceration amounted to "good cause" for the late filing, claimant's late request for hearing must still be denied on the grounds that it was not filed within a "reasonable time."

EAB reviewed the entire hearing record. On de novo review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 16-UI-56857 is affirmed.

J. S. Cromwell and D. P Hettle;
Susan Rossiter, 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. 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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