

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0575**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY AND FINDINGS OF FACT:** On January 25, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with Wildhorse Resort & Casino on May 1, 2015 (decision # 121118). On January 26, 2016, claimant filed a timely request for hearing on decision # 121118. Five days later, on February 1, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work with the Kroger Co. without good cause (decision # 104547).

On February 2, 2016, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for February 16, 2016 at 2:30 p.m. The February 2, 2016 notice was addressed only to claimant and Wildhorse Resort & Casino, included a caption that stated "IN THE MATTER OF [claimant's name], Claimant [and] Wildhorse Resort & Casino, Employer," and stated that "The hearing is regarding the Administrative Decision(s) dated January 25, 2016." The notice of hearing did not refer to Kroger or the Department's February 1, 2016 decision # 104547.

On February 16, 2016, ALJ M. Davis held a hearing on decision # 121118, and on February 22, 2016, issued Hearing Decision 16-UI-53459, concluding claimant quit work with Wildhorse Casino & Resort with good cause. Also on February 22, 2016, decision # 104547 became final without a request for hearing having been filed.

On March 3, 2016, claimant filed an untimely request for hearing on decision # 104547. On March 8, 2016, ALJ Kangas issued Hearing Decision Hearing Decision 16-UI-54553, dismissing claimant's request for hearing on decision # 104547, subject to claimant's right to renew the request by submitting a response to an appellant questionnaire to the Office of Administrative Hearings (OAH) by March 22, 2016. OAH did not receive claimant's response. On March 28, 2016, Hearing Decision 16-UI-54553 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On April 11, 2016, claimant filed a late application for review of Hearing Decision 16-UI-54553 with EAB. On April 14, 2016, EAB issued Employment Appeals Board Decision 2016-EAB-

0420, allowing claimant's late application for review, and reversing and remanding Hearing Decision 16-UI-54553 to OAH for additional proceedings.

On May 2, 2016, ALJ Murdock conducted a hearing, and on May 4, 2016 issued Hearing Decision 16-UI-58838, concluding claimant did not have good cause for filing a late request for hearing on decision # 104547 and dismissing her request. On May 16, 2016, claimant filed an application for review of Hearing Decision 16-UI-58838 with EAB.

With her application for review, claimant submitted a written argument. As a preliminary matter, claimant failed to certify that she provided a copy of her argument to the employer, as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we were unable to consider the argument when reaching this decision. Even if we had, however, the outcome of this decision would remain the same for the reasons that follow. Claimant indicated in her argument that she was not comfortable with Kroger's representative being involved with the hearing. However, Kroger was a party to the matter and had the right to attend the hearing. The ALJ did not err by allowing Kroger's representative to attend and participate in the hearing.

In order to allow claimant's late request for hearing, she had to show good cause for the late filing and file it within a "reasonable time." ORS 657.875. Claimant must meet both requirements. In this case, the primary reason claimant argued that she did not file a timely request for hearing on decision # 104547, regarding her work separation from Kroger, was her belief, that when she requested a hearing on the Department's January 25, 2016 decision about her separation from Wildhorse Resort & Casino (decision # 121118), the hearing request applied to both her work separation from Wildhorse and her separation from Kroger. Claimant's argument is implausible, however, because claimant requested a hearing on the Wildhorse work separation on January 26, 2016 --five days *before* the Department had issued its decision on the Kroger work separation. Additionally, OAH mailed a notice of hearing to claimant for the February 16 hearing that indicated in two places that Wildhorse was the only employer scheduled to appear at the hearing, the January 25, 2016 decision was the only decision at issue during that hearing, and Kroger's name did not appear anywhere within the notice. Given those circumstances, claimant's argument did not demonstrate she had good cause for filing a late hearing request about her Kroger work separation because of proceedings about her Wildhorse work separation.

Even if claimant had shown good cause, a late request for hearing must also be filed within a "reasonable time" after the circumstances that prevented a timely filing ceased to exist; a "reasonable time" is defined as seven days. In this case, claimant argued that her belief that her Kroger work separation would be addressed during the hearing about her Wildhorse work separation prevented her from filing a timely request for hearing on decision # 104547. After the February 16th hearing, at which only Wildhorse was scheduled to appear, and only Wildhorse appeared, and only her Wildhorse work separation was discussed, the circumstances that had prevented claimant from realizing she needed to request a hearing on the Kroger work separation decision ended. At that time, claimant still had 5 days remaining during which she could have filed a timely request for hearing on decision # 104547, and had 7 days to request that hearing within a "reasonable time," but, for unknown reasons, waited until March 3rd to do so. Because claimant's argument did not establish that she filed her late request for hearing within seven days after the circumstances that prevented a timely filing ceased to exist, our conclusion that she did not file it within a "reasonable time" would not have changed even if we had considered her argument.

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-58838 is affirmed.

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

**DATE of Service:** May 18, 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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