

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0801

Affirmed
Late Request for Hearing Dismissed
Disqualification

PROCEDURAL HISTORY: On April 19, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 145551). On May 9, 2016, decision # 145551 became final without a request for hearing having been filed. On May 13, 2016, claimant filed a late request for hearing. On May 20, 2016, ALJ Kangas issued Hearing Decision 16-UI-60063, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by June 3, 2016. On May 31, 2016, claimant filed a timely response to the appellant questionnaire. On June 20, 2016, ALJ Kangas issued Hearing Decision 16-UI-62142, re-dismissing claimant's request for hearing as untimely without good cause. On July 7, 2016, claimant filed an application for review of Hearing Decision 16-UI-62142 with the Employment Appeals Board (EAB).

EAB reviewed the entire hearing record. In written argument, claimant offered new information that is not part of the hearing record, that he never received the April 19, 2016 notice of administrative decision # 145551. OAR 471-041-0090(2) (October 29, 2016) provides that EAB may consider new information when the party offering the information establishes that the new information is relevant and material to EAB's determination, and that factors or circumstances beyond the party's reasonable control prevented the party from offering the information into the hearing record. However, the appellant questionnaire attached to Hearing Decision 16-UI-60063 specifically stated that claimant needed to "provide information about the administrative decision the Employment Department mailed to [him] on April 19, 2016," noted that a "hearing request on that decision was due on May 9, 2016", and that claimant "filed [his] hearing request on May 13, 2016." Exhibit 3 at 1. In his response to the appellant questionnaire, claimant stated that he received the administrative decision on April 28, 2016, confirmed that he filed his hearing request on May 13, 2016, and asserted that his request was timely because it was within 20 days from the date he received notice of the decision. Exhibit 3 at 2. It was within claimant's reasonable control to state in his response to the appellant questionnaire that he never received the April 19, 2016 notice of administrative decision # 145551 if, in fact, he never received it. Claimant therefore failed to establish that factors or circumstances beyond his reasonable control prevented him from offering his new information into the hearing record. Nor did claimant establish that his new

information is material to EAB's determination, given that it is inconsistent with, and does not outweigh, his prior written statement that he received the April 19, 2016 administrative decision on April 28, 2016. EAB therefore did not consider claimant's new information when reaching this decision.

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

DECISION: Hearing Decision 16-UI-62142 is affirmed.

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

DATE of Service: July 12, 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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