

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0894

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On May 24, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 62309). On June 13, 2016, decision # 62309 became final without claimant having filed a timely request for hearing. On June 24, 2016, claimant filed a late request for hearing. On June 28, 2016, ALJ Kangas issued Hearing Decision 16-UI-62694, dismissing claimant's late request for hearing subject to the right to renew the request by responding to an appellant questionnaire by July 12, 2016. On July 18, 2016, claimant responded to the questionnaire. Claimant's questionnaire was construed as a timely application for review of Hearing Decision 16-UI-62694 with the Employment Appeals Board (EAB).

Claimant's appellant questionnaire response constitutes a written argument for EAB's consideration under OAR 471-040-0080 and OAR 471-041-0090 (October 29, 2006). Consideration of claimant's argument would not change the outcome of this decision, however. Claimant's late request for hearing may only be allowed if she established by a preponderance of the evidence that factors or circumstances beyond her reasonable control or an excusable mistake prevented her from requesting a hearing. OAR 471-040-0010. Here, claimant admitted that she received decision # 62309 when it was mailed and did not file a timely request for hearing because she was away from her home, but "could have" filed timely had she "had a friend/anyone to check my mail and fax me appeal letter." Claimant's argument shows that she was not prevented from a timely filing due to factors beyond her reasonable control or an excusable mistake. Therefore, claimant's late request for hearing may not be granted.

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-62694 is affirmed.

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

DATE of Service: August 4, 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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