

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0975

Affirmed
Late Request for Hearing Denied

PROCEDURAL HISTORY: On June 9, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (# 195231) assessing a \$567 overpayment. On June 29, 2016, decision # 195231 became final without a request for hearing having been filed. On July 29, 2016, claimant filed an untimely request for hearing. On August 8, 2016, ALJ Kangas issued Hearing Decision 16-UI-65162, dismissing claimant's late hearing request subject to his right to renew the request by responding to an appellant questionnaire by August 22, 2016. On August 24, 2016, claimant responded to the appellant questionnaire and filed a timely application for review with the Employment Appeals Board (EAB).

EVIDENTIARY MATTER: For purposes of EAB's review in this matter, claimant's appellant questionnaire constitutes an "[e]xhibit offered, but not received into evidence, which EAB may "receive [] into evidence as necessary to complete the record." OAR 471-041-0090(1) (October 29, 2006). The appellant questionnaire is therefore marked as EAB Exhibit 1, and EAB Exhibit 1 is admitted into the record.

FINDINGS OF FACT:¹ (1) In June 2016, claimant was diagnosed with diabetes.

(2) Claimant received decision # 195231 soon after it the Department mailed it to him. Claimant's wife did not open the letter from the Department when it arrived, and placed it in a stack of "junk mail."

(3) On or about July 29, 2016, claimant found the letter containing decision # 195231, opened it, and requested a hearing.

CONCLUSION AND REASONS: Claimant failed to demonstrate good cause for filing a late hearing request, and his request for hearing is dismissed.

¹ The information upon which all Findings of Fact are based is contained in EAB Exhibit 1.

ORS 657.269 provides that an individual has 20 days from the date an administrative decision is mailed to request a hearing. ORS 657.875 provides that this deadline may be extended a reasonable time upon a showing of good cause. Under OAR 471-040-0010(1) (February 10, 2012), “good cause” exists if the “action, delay of failure to act arises from an excusable mistake or from factors beyond an applicant’s reasonable control.” A “reasonable time” is defined as seven days from the date on which the circumstances that prevented a timely filing ended. OAR 471-040-0010(3).

Claimant’s request for hearing was late because his wife did not open it and placed it in a stack of “junk mail.” As a result of his wife’s actions, claimant did not find the decision until approximately one month after it had been mailed to him. It was well within claimant’s reasonable control to check mail that he and his wife received to make sure that important correspondence was not inadvertently placed with “junk mail.” Since claimant’s failure to carefully monitor his mail occurred because of his negligence, we do not find that his late hearing request resulted from an excusable mistake. Claimant therefore failed to demonstrate good cause for his failure to file a timely hearing request.² His request for hearing is dismissed.

DECISION: Hearing Decision 16-UI-65162 is affirmed.

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

DATE of Service: August 26, 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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² We note that although claimant explained that he was diagnosed with diabetes in June 2016, he did not allege or explain that there was any connection between this condition and his failure to check his mail.