

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0977

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On July 1, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 93639). The Department mailed notice of the decision to claimant at her last known address of record with the Department. On July 21, 2016, decision # 93639 became final without claimant having filed a request for hearing. On August 3, 2016, claimant filed a late request for hearing. On August 8, 2016, ALJ Kangas issued Hearing Decision 16-UI-65164, dismissing claimant's late request for hearing subject to her right to renew the request by responding to an appellant questionnaire by August 22, 2016. On August 23, 2016, claimant responded to the appellant questionnaire and filed a timely application for review of Hearing Decision 16-UI-65164 with the Employment Appeals Board (EAB). On August 24, 2016, the Office of Administrative Hearings (OAH) notified claimant that it would not consider her appellant questionnaire because it was late, and that Hearing Decision 16-UI-65164 remained undisturbed.

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 admitted into the record.

FINDING OF FACT: Claimant failed to file a timely request for hearing on decision # 93639 because she did not receive notice of the decision in the mail. She did not receive notice of decision # 93639 in the mail because she failed to update her address of record with the Department. *See* EAB Exhibit 1. Claimant was claiming benefits at the time.¹

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 93639 is dismissed.

¹ We take notice of this fact, which is contained in Employment Department records. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

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.” However, good cause does not include failure to receive a document due to not notifying the Department of an updated address while the person is claiming benefits. OAR 471-040-0010(1)(b)(A).

In the present case, claimant failed to file a timely request for hearing on decision # 93639 because she did not receive notice of the decision in the mail. However, she did not receive notice of the decision in the mail because she failed to notify the department of an updated address while she was claiming benefits. Claimant therefore failed to show good cause for filing a request for hearing late, and her request for hearing is dismissed.

DECISION: Hearing Decision 16-UI-65164 is affirmed.

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

DATE of Service: August 29, 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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