

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1071**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On November 5, 2012, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$1,960 overpayment, \$294 monetary penalty and 34 penalty weeks (decision # 200343). On November 26, 2012, decision # 200343 became final without claimant having filed a timely request for hearing. On August 19, 2016, claimant filed a request for hearing by telephone. On August 23, 2016, ALJ Kangas issued Hearing Decision 16-UI-66141, dismissing claimant's request for hearing subject to his right to renew the request by responding to an appellant questionnaire by September 6, 2016. On September 12, 2016, claimant responded to the questionnaire and filed an application for review of Hearing Decision 16-UI-66141. On September 14, 2016, ALJ Kangas issued a letter notifying claimant that, because he responded late to the appellant questionnaire, the Office of Administrative Hearings (OAH) would not review the contents.

Claimant's appellant questionnaire response is construed as a written argument for purposes of EAB's review of this matter. We construe claimant's submission of the information as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. OAH declined to consider the information claimant presented, suggesting that presenting the information was beyond his control. We therefore admitted claimant's response into evidence as EAB Exhibit 1, and reviewed and considered it when reaching this decision.<sup>1</sup>

**FINDINGS OF FACT:** In October 2012, claimant returned to work and, thereafter, mistakenly believed that any issues connected to his unemployment insurance claim would be resolved because he was no longer claiming benefits.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing should be denied.

<sup>1</sup> 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 at EAB Exhibit 1.

ORS 657.269 requires that parties file requests for hearing within 20 days after the date the decisions were mailed. In order to be timely, claimant's request for hearing in this matter had to be filed no later than November 26, 2012. Claimant filed it on August 19, 2016, making it almost four years late. ORS 657.875 allows the filing deadline to be extended a "reasonable time" upon a showing of "good cause." OAR 471-040-0010(1) defines "good cause" as factors or circumstances beyond an individual's reasonable control or an excusable mistake, but specifically excludes from the definition of "good cause" not understanding the implications of a decision or notice when it is received. OAR 471-040-0010(3) defines "a reasonable time" as seven days after the circumstances that prevented a timely filing ceased to exist.

Claimant did not establish that he had good cause for the late filing or filed his late request for hearing within the seven-day "reasonable time" period. With respect to the reason for claimant's late filing, claimant argued that he thought because he no longer needed unemployment insurance and stopped claiming "that alone would resolve any further attempt to penalize me for not attending a work shop [sic] . . . because I was at work, as scheduled by my new employer," that he had notified Department staff that he would be unable to attend the workshop, and he "was mistaken when believing a job, and no longer requesting money from the state was enough to put an end to this nightmare." However, the overpayment in this matter is entirely unrelated to claimant's attendance at or failure to attend any workshop. The decision assessing the overpayment and penalties specifically states that claimant was overpaid because during a six-week period in 2012 claimant reported to the Department that he had zero earnings, confirmed to the Department that he had been truthful when reporting zero earnings, but had actually earned well over \$4,000 during those weeks performing work for an auto sales business.

To the extent claimant failed to request a hearing within the 20-day period after the decision in this matter was issued because he mistakenly believed it would be resolved if he stopped claiming benefits, OAR 471-040-0010(1)(b)(B) specifically states that failing to understand the implications of the decision does not constitute good cause. Claimant did not assert or establish that any other circumstances or excusable mistakes prevented him from filing his request within the 20-day time period allowed, and, therefore, did not establish "good cause" for the late filing.

Claimant also did not establish that the late request for hearing he filed on August 19, 2016 was filed within a seven-day "reasonable time" period after any circumstances that prevented a timely filing ceased to exist. Claimant did not explain when in the 4-year period between the date the Department served the decision and the date he requested a hearing he learned that the overpayment and penalties at issue in decision # 200343 were not resolved by his return to work in October 2012, nor did he make any showing suggesting that August 19, 2016 occurred within seven days of that date.

Because claimant has not shown good cause to extend the filing period to August 19, 2016, his late request for hearing is dismissed.

**DECISION:** Hearing Decision 16-UI-66141 is affirmed.

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

**DATE of Service: September 20, 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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