

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1302

Reversed
Late Request for Hearing Allowed

PROCEDURAL HISTORY: On September 27, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 73439). On October 17, 2016, decision # 73439 became final without a request for hearing having been filed. On October 24, 2016, claimant filed an untimely request for hearing on decision # 73439. On October 27, 2016, ALJ Kangas issued Hearing Decision 16-UI-70046, dismissing claimant's hearing request as untimely, subject to claimant's right to renew her request by responding to an appellant questionnaire within 14 days. On November 15, 2016, claimant filed an application for review of Hearing Decision 16-UI-70096 with and submitted her appellant questionnaire to the Employment Appeals Board (EAB). By letter dated November 17, 2016, the ALJ informed claimant that her response to the appellant questionnaire was not timely and would not be considered.

EVIDENTIARY MATTER: In support of her application for review, claimant submitted a copy of her response to the appellant questionnaire. EAB may consider new information that is not part of the record if the information is relevant and material to EAB's determination and the party offering the information demonstrates that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. OAR 471-040-0090 (October 29, 2006). The information contained in claimant's response to the appellant questionnaire is relevant and material to the issue before EAB: whether claimant had good cause for submitting an untimely hearing request. In addition, the ALJ's refusal to consider claimant's response to the appellant questionnaire was a circumstance beyond claimant's reasonable control. For these reasons, claimant's request to present new information is granted. Claimant's response to the appellant questionnaire has been marked as EAB Exhibit 1, and a copy of EAB Exhibit 1 is included with this decision. Any party that objects to the admission of EAB Exhibit 1 must submit its objection in writing to EAB within 10 days of the date on which this decision was mailed. If no objection is received, or an objection is received and overruled, EAB Exhibit 1 will remain part of the record.

FINDINGS OF FACT: (1) Claimant never received decision # 73439. She received weekly letters from the Department advising her that the Department could not pay her unemployment benefits

because of an issue with her claim. Had she known about the decision, she would have immediately requested a hearing.

(2) Claimant found out about the decision when she called the Department about her benefits.

CONCLUSION AND REASONS: Claimant demonstrated good cause for filing a late hearing request.

Under ORS 657.269, claimant had 20 days after decision # 194849 was issued to request a hearing. ORS 657.875 provides, however, that the time period for requesting a hearing may be extended “a reasonable time” upon a showing of “good cause.” “Good cause” is “when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant’s reasonable control.” OAR 471-040-0010(1). A “reasonable time” is “seven days after the circumstances that prevented a timely filing ceased to exist.” OAR 471-040-0010(3) (February 10, 2012).

The record shows that claimant did not receive decision # 73439, even though she received other correspondence from the Department that was sent to her address of record with the Department. Claimant’s failure to file a timely hearing request was apparently caused by a problem with the receipt of all her mail, a circumstance beyond her reasonable control. Claimant’s assertion that she would have immediately requested a hearing had she known about the decision indicates that she did not delay in making her hearing request once she found out that the decision existed. We therefore conclude that claimant demonstrated good cause for her late hearing request, and filed her request within a reasonable time after the circumstances that prevented a timely filing ceased to exist. Claimant’s late request for a hearing is allowed.

DECISION: Hearing Decision 16-UI-70046 is set aside, as outlined above.

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

DATE of Service: November 23, 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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