

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1309

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On July 3, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 194849) assessing a \$1,504 overpayment, 12 penalty weeks, and a \$451.20 monetary penalty. On July 23, 2014, decision # 194849 became final without claimant having requested a hearing. On October 25, 2016, claimant filed a late request for hearing. On October 28, 2016, ALJ Kangas issued Hearing Decision 16-UI-70096, dismissing claimant's hearing request as untimely, subject to claimant's right to renew his request by responding to an appellant questionnaire within 14 days. On November 14, 2016, claimant filed an application for review of Hearing Decision 16-UI-70096 with and submitted his appellant questionnaire to the Employment Appeals Board (EAB). By letter dated November 21, 2016, the ALJ informed claimant that his response to the appellant questionnaire was not timely and would not be considered.

EVIDENTIARY MATTER: In support of his application for review, claimant submitted a copy of his 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) On July 8, 2014, claimant received decision # 194849.

(2) On October 28, 2016, claimant filed a late request for hearing on decision # 194849 because he wanted to have the penalties set aside.

CONCLUSION AND REASONS: Claimant failed to demonstrate 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).

Claimant received decision # 194849 five days after it was mailed, but did not file his hearing request until over two years after he received the decision. His stated reason for filing the hearing request was his desire to have the penalties in the decision set aside. Based on this record, it appears that claimant understood that decision # 194849 required him to repay the Department for unemployment benefits he had received. It does not appear, however, that claimant understood that the decision also imposed penalty weeks that affected future claims for unemployment benefits. Under OAR 471-040-0010(1)(b)(B), good cause for filing a later hearing request does not include “[n]ot understanding the implications of a decision or notice when it is received.” Claimant therefore failed to demonstrate good cause for filing a late hearing request, and his hearing request must be dismissed.

DECISION: Hearing Decision 16-UI-70096 is affirmed.

Susan Rossiter and D. P. Hettle;
J. S. Cromwell, 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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