

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1324**

*Reversed*  
*Late Request for Hearing Allowed*

**PROCEDURAL HISTORY:** On August 17, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 93515). On September 6, 2016, decision # 93515 became final without having filed a request for hearing. On October 3, 2016, claimant filed a late request for hearing. On October 5, 2016, ALJ Kangas issued Hearing Decision 16-UI-68649, dismissing claimant's hearing request as untimely, subject to claimant's right to renew the request by responding to an appellant questionnaire within 14 days. Claimant timely responded to the appellant questionnaire. On November 2, 2016, ALJ Wyatt conducted a hearing, and on November 10, 2016, issued Hearing Decision 16-UI-70983, dismissing claimant's hearing request as untimely without good cause. On November 28, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

With his written argument, claimant submitted a summary of a neuropsychological assessment of claimant made by a psychologist on September 13, 2016, and a November 17, 2016 letter from the psychologist in which she discussed the findings in her assessment and their effect on claimant's ability to understand his application for unemployment. Under OAR 471-041-0090 (October 29, 2006), EAB may consider new information if the party offering the information shows that circumstances beyond the party's reasonable control prevented the party from presenting the information at the hearing. Claimant provided no explanation why he was unable to present the September 13 assessment at the hearing, or obtain a letter from the psychologist in time to present the letter at the hearing. Claimant's request to present new information is therefore denied. We considered the remainder of claimant's written argument to the extent it was relevant and based on information in the record.

**FINDINGS OF FACT:** (1) In 2005, claimant suffered a massive brain tumor. Although the tumor was successfully treated, claimant had long term side effects which included problems with his memory and confusion. In approximately 2015, claimant developed a seizure disorder which was related to his tumor. The seizure disorders aggravated his confusion and memory problems. Claimant was tested for cognitive function, and the tests showed that "his ability to process new information quickly or **accurately** is greatly diminished." (Emphasis in the original.) Exhibit 1, 10/13/16 Letter. Many of the

problems claimant was experiencing were new to him, and he and his family were not aware of the nature and full extent of claimant's confusion and memory problems. Audio Recording at 43:45, 43:56.

(2) Claimant received decision # 93515 and read it. He does not, however, remember reading the section of the decision advising him that he needed to request a hearing by September 6, 2016.

(3) Claimant did not ask his wife for assistance until October 3, 2016. On that date, claimant's wife realized that he had not timely requested a hearing and helped claimant make a late request for hearing.

**CONCLUSION AND REASONS:** We disagree with the ALJ and conclude that claimant's request for hearing on decision # 93515 should be allowed.

Under ORS 657.269, claimant had 20 days after decision # 193028 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).

In Hearing Decision 16-UI-70983, the ALJ concluded that although claimant suffered from a medical condition that "would be considered good cause for extending the appeal period, in this case the delay was lengthy and claimant had assistance available from his wife and he had also been in recent communication with the Employment Department about the adjudication process." Hearing Decision 16-UI-70983 at 3. In regard to the length of time it took claimant to request a hearing, the ALJ fails to explain (and we cannot discern from the evidence in the record) how such a delay indicates that his medical condition did not constitute good cause for extending the appeal period. The record also shows that although claimant's wife may have been aware of the August 17 decision, she was unaware of claimant's inability to understand and promptly respond to the decision, due to recent changes in his medical condition. In regard to contacts claimant may have had with Department representatives during the adjudication process and prior to August 17, there is no evidence that a Department representative advised claimant of the date on which the decision would be issued or told him about the need to promptly request a hearing if he disagreed with the decision. Any knowledge that claimant may have had about a forthcoming decision does little to prove that he understood or should have understood the deadline for filing a hearing request on that decision. We conclude that claimant's failure to timely appeal decision # 193028 resulted from the confusion and memory problems caused by his medical condition, a circumstance beyond his reasonable control. Because claimant filed his hearing request as soon as his wife discovered he had not done so, we also conclude that claimant acted within a reasonable time after the circumstances that prevented a timely filing ceased to exist.

For the reasons stated above, claimant's late request for hearing is allowed. Claimant is entitled to a hearing on the merits of decision # 193028.

**DECISION:** Hearing Decision 16-UI-70983 is set aside, as outlined above.

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

**DATE of Service: November 30, 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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