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State of Oregon
Employment Appeals Board
875 Union St. N.E.
Salem, OR 97311

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EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1379

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On October 12, 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 # 74107). On October 13, 2016, the Department served notice of an administrative decision correcting the date of claimant's work separation from the employer, and stating that decision # 74107 remained in full force and effect, that the correction did not affect the prior outcome of the case, and that the date by which any appeal of decision # 74107 had to be filed remained unchanged from the prior decision. On November 1, 2016, decision # 74107 became final without claimant having requested a hearing. On November 3, 2016, claimant filed a late request for hearing. On November 8, 2016, ALJ Kangas issued Hearing Decision 16-UI-70750, dismissing claimant's request for hearing subject to her right to renew the request by responding to an appellant questionnaire by November 22, 2016. On November 15, 2016, claimant responded to the appellant questionnaire. ALJ Kangas considered claimant's response, and on November 17, 2016 issued Hearing Decision 16-UI-71376, re-dismissing claimant's request for hearing as untimely without good cause. On December 7, 2016, claimant filed an application for review of Hearing Decision 16-UI-71376 with the Employment Appeals Board (EAB).

With her application for review, claimant submitted new information for EAB's consideration, including an additional reason for filing a late request for hearing, that her companion pet died of bone cancer, and that her wage complaint against the employer with the Oregon Bureau of Labor and Industries (BOLI) has been settled with the employer agreeing to pay claimant \$2,291.70, which claimant argued shows she quit work with good cause. However, OAR 471-041-0090(2) provides that EAB may consider new information only when the party offering the information establishes that it is relevant and material to EAB's determination, and that factors or circumstances beyond the party's reasonable control prevented the party from offering the information into the hearing record. Here, claimant failed to establish that it was beyond her reasonable control to include all her reasons for filing a late request for hearing in her response to the appellant questionnaire. Nor did she establish that the death of her companion pet is material to EAB's determination of whether claimant had good cause for filing a late request for hearing. Nor is claimant's information regarding the settlement of her wage relevant to EAB's

determination of that issue, which is the only issue before EAB in this matter. EAB therefore did not consider claimant's new information when reaching this decision.

FINDING OF FACT: Claimant received notice of decision # 74107 on or about October 23, 2016 and understood she was required to request a hearing by November 1, 2016. However, claimant "lost track of the due date" for filing a request, and therefore did not do so until November 3, 2016. Exhibit 3.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant failed to establish good cause for filing a late request for hearing.

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 1, 2016. Claimant filed it on November 3, 2016, making the request two days 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.

In her response to the appellant questionnaire, claimant asserted that she "lost track of the due date" for filing a request for hearing on decision # 74107 because she is the single parent of two children, was looking for work, and filing a BOLI complaint against the employer. Exhibit 3. However, claimant's assertions are not sufficient to show that it was beyond her reasonable control to keep track of the due date for filing a request for hearing, and file a timely request. Nor was claimant's failure to keep track of the due date for filing a request for hearing an excusable mistake because it does not raise due process issues, was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Claimant therefore failed to show good cause for filing a late request for hearing.

Claimant's request for hearing therefore is dismissed as untimely without good cause.

DECISION: Hearing Decision 16-UI-71376 is affirmed.

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

DATE of Service: December 13, 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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