

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1395**

*Affirmed*  
*Late Request for Hearing Denied*

**PROCEDURAL HISTORY:** On July 21, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 80105). On August 10, 2016, decision # 80105 became final without a request for hearing having been filed. On October 18, 2016, claimant filed an untimely request for hearing. On November 3, 2016, ALJ Frank conducted a hearing, and on November 10, 2016, issued Hearing Decision 16-UI-71009, dismissing claimant's hearing request as untimely without good cause. On November 30, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

With her application for review, claimant included a copy of a "Transmission Log" indicating that on August 5, 2016, an unidentified one page document was faxed from a Department Worksource office to a number that is not specified. The Transmission Log was not offered into evidence at the hearing. Under OAR 471-041-0090, EAB may consider new information if the party presenting the information demonstrates that circumstances beyond the party's reasonable control prevented the party of presenting the information at the hearing. Claimant testified about the Transmission Log at the hearing; when asked by the ALJ why she had not offered a copy of this document as evidence at the hearing, claimant testified that she did not "think about it." Audio Recording at 19:29. The hearing notice claimant received for the November 3 hearing informed claimant that the documents included with the hearing notice "are the only documents that will be considered by the ALJ at the hearing," and that claimant should provide copies of any other documents she wished to have considered to the ALJ and all parties. It was well within claimant's reasonable control to carefully read the hearing notice and understand the need to provide the ALJ and the parties with documents relevant to her untimely hearing request. Claimant's request to have EAB consider new information is therefore denied.<sup>1</sup>

<sup>1</sup> Even if we had considered claimant's August 5 "Transmission Log," it would not have changed the outcome of this decision. At the hearing, claimant asserted that the "Transmission Log" was proof that she submitted a request for hearing on decision # 80105 on August 5. Because the "Transmission Log" shows only that an unidentified document was faxed from a Department office and does not specify to what number the fax was transmitted, it does not support claimant's assertion.

**FINDINGS OF FACT:** (1) Claimant received decision # 80105 a few days after it was mailed to her. She read the decision, disagreed with its conclusion, and understood that she needed to file her request for a hearing on or before August 10, 2016.

(2) On October 18, 2016, claimant faxed a letter to OAH in which she requested a hearing on decision # 80105 to OAH. In her letter, claimant stated:

I'm requesting a hearing for second time as I mailed my first request by mail on August 5<sup>th</sup> 2016. The request was sent by mail & I still have not gotten a notice for a hearing.  
Exhibit 2.

**CONCLUSION AND REASONS:** We agree with the ALJ and conclude that claimant's late request for hearing must be dismissed.

Under ORS 657.269, claimant had 20 days after decision # 80105 was issued – until August 10, 2016 -- 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 filed a request for hearing on October 18, 2016, over two months from the date hearing decision # 80105 was issued. Claimant asserted at the hearing, however, that on August 5, 2016, she faxed and mailed a request for hearing. Audio Recording at 16:06. Claimant testified that after she heard nothing further regarding her hearing request, she called OAH on August 30, 2016. According to claimant, the OAH representative with whom she spoke on that date told claimant that although OAH had no record of her hearing request, OAH was probably “processing” it, and that it might take several weeks until she received notice of a hearing. Audio Recording at 14:39, 14:59.

The record shows, however, that that claimant provided contradictory accounts of how and when she submitted her hearing requests prior to October 18. In her October 18 letter to OAH, she claimed that she mailed her hearing request on August 5; at the hearing, however, claimant testified that she both faxed and mailed her August 5 hearing request. We also find highly unlikely that claimant made three contacts prior to October 18 to attempt to request a hearing – supposedly by fax and mail on August 8, and again by telephone call to OAH on August 30—and that none of these requests were received and recorded by the Department or OAH. Finally, we also find implausible claimant's account of her August 30 conversation with an OAH representative. It is unlikely that after acknowledging that OAH had received nothing from claimant, the representative then told claimant to wait several weeks for a hearing, and did not record the phone call as a request for a hearing or direct claimant to submit another hearing request. Because the evidence claimant provided about her hearing requests prior to October 18 was inconsistent and implausible, we conclude that the October 18 letter is the most persuasive evidence of when claimant first made her hearing request. Claimant failed to provide any reason why her hearing request was made more than 20 days after decision # 80105 was issued. She therefore did not demonstrate good cause for her untimely request, and her hearing request must be dismissed.

**DECISION:** Hearing Decision 16-UI-71009 is affirmed.

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

**DATE of Service: December 27, 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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