

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1418

Affirmed
Late Request for Hearing Denied

PROCEDURAL HISTORY: On October 11, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work with Fitzpatrick Painting without good cause (decision # 120649). On October 31, 2016, decision # 120649 became final without claimant having filed a request for hearing. On November 29, 2016, claimant filed an untimely request for hearing. On December 1, 2016, ALJ Kangas issued Hearing Decision 16-UI-72051, 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. On December 19, 2016, claimant submitted her response to the appellant questionnaire and filed a timely application for review with the Employment Appeals Board (EAB). By letter dated December 20, 2016, the Office of Administrative Hearings informed claimant that because she had not submitted her appellant questionnaire response within 14 days of the date on which Hearing Decision 16-UI-72051 had been issued, it would not be considered.

Evidentiary Matter: We construe claimant's submission of her appellant questionnaire response to EAB as a request for EAB to consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at a hearing if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at a hearing. OAH's refusal to consider the information claimant presented in her appellant questionnaire response was a circumstance beyond claimant's reasonable control. We therefore admitted claimant's response into evidence as EAB Exhibit 1, and reviewed and considered this response when reaching this decision. 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 objections to this office in writing, setting forth the basis of the objection, within ten days of the date on which this decision is mailed. Unless such an objection is received, EAB Exhibit 1 will remain part of the record.

FINDINGS OF FACT: (1) On October 11, 2016, claimant received decision # 120649.

(2) Claimant did not initially file a request for hearing on decision # 120649 because she had found a job and was working. She filed her hearing request after she was laid off and because she realized the

decision indicated that her former employer, Fitzpatrick Painting, had told the Department that she “walked off the job,” with which claimant did not agree. EAB Exhibit 1.

CONCLUSION AND REASONS: Claimant’s late application for review of Hearing Decision 16-UI-72051 is dismissed.

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 October 31, 2016. Because claimant filed it on November 29, 2016, it was 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.

After she received decision # 120649 on October 11, 2016, claimant did not immediately file her hearing request because she was employed. She filed her hearing request only after she was laid off by her new employer and because she realized that the decision indicated that her former employer, Fitzpatrick Painting, had told the Department that she “walked off the job,” with which claimant disagreed. It was well within claimant’s reasonable control to carefully read decision # 120649, and understand that it affected her qualifications for unemployment benefits, whether she was employed or not, and that if she disagreed with it, she needed to file her hearing request on or before the deadline specified in the decision. Under OAR 771-040-0010(1)(b)(B), “not understanding the implications of a decision...when it is received” is not good cause for a late request for hearing. Claimant therefore failed to demonstrate good cause for her late hearing request.

DECISION: Hearing Decision 16-UI-72051 is affirmed.

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

DATE of Service: December 29, 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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