

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-1435

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On August 29, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from July 24, 2016 to August 13, 2016 (decision # 132458). Claimant filed a timely request for hearing. On October 3, 2016, ALJ Murdock conducted a hearing, and on October 4, 2016 issued Hearing Decision 16-UI-68542, affirming decision # 132458. On October 24, 2016, Hearing Decision 16-UI-68542 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On November 8, 2016, the Department served notice of administrative decision, based on decision # 132458, in which the Department assessed a \$1,130 overpayment claimant was liable to repay (decision # 83842). On November 28, 2016, decision # 83842 became final without claimant having filed a timely request for hearing. On December 2, 2016, claimant filed a late request for hearing on decision # 83842. On December 6, 2016, ALJ Kangas issued Hearing Decision 16-UI-72321, dismissing claimant's late request for hearing on decision # 83842 subject to his right to renew the request by responding to an appellant questionnaire by December 20, 2016. On December 22, 2016, claimant submitted a late response to the appellant questionnaire to the Office of Administrative Hearings (OAH) and a timely application for review of Hearing Decision 16-UI-72321 to the Employment Appeals Board. On December 27, 2016, ALJ Kangas issued a letter in which she stated that OAH would not review claimant's late response to the appellant questionnaire.

EVIDENTIARY MATTER: Claimant's appellant questionnaire response is construed as a written argument for purposes of EAB's review of this matter. We construe claimant's submission of the information as a request to have EAB consider new information under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider information not presented at the hearing if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. OAH declined to consider the information claimant presented, suggesting that presenting the information was beyond his control. We therefore admitted the questionnaire into evidence as EAB Exhibit 1, and reviewed and considered it when reaching this decision.¹

¹ Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. Unless such objection is received and sustained, the exhibit will remain in the record at EAB Exhibit 1.

FINDINGS OF FACT: Claimant received decision # 83842 on approximately November 12, 2016. He subsequently lost or discarded his appeal paperwork in error, and he forgot about the matter because he was occupied with a personal matter. By the time he remembered, the deadline for filing a timely request for hearing had expired.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 83842 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 November 28, 2016. Claimant filed it on December 2, 2016, making it late. ORS 657.875 allows the filing deadline to be extended, but in every case the deadline may only be extended upon a showing of "good cause." "Good cause" means "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 (February 10, 2012).

In his response to the appellant questionnaire, claimant asserted that he did not file his request for hearing within the time allowed because he lost his appeal paperwork and forgot about the matter. Claimant's assertions are not sufficient to show that it was beyond his reasonable control to keep track of the paperwork and the due date for filing a request for hearing, and file a timely request. Although claimant's failure to keep track of the due date was a mistake, it was not an "excusable mistake" for purposes of establishing good cause for his late request for hearing because the mistake did not raise due process issues and was not the result of inadequate notice, reasonable reliance on another person, or the inability to follow directions despite substantial efforts to comply. Claimant has failed to show good cause, and his request for hearing therefore is dismissed.

DECISION: Hearing Decision 16-UI-72321 is affirmed.

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

DATE of Service: December 28, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.