

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0033

Affirmed
Late Request to Reopen Denied

PROCEDURAL HISTORY: On September 21, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was able to work from July 31 through August 20, 2016 (decision # 75846). The employer filed a timely request for hearing. On October 12, 2016, the Office of Administrative Hearings (OAH) served notice of a hearing scheduled for November 1, 2016. On November 1, 2016, the employer failed to appear at the hearing, and on November 2, 2016, ALJ Vincent issued Hearing Decision 16-UI-70375, dismissing the employer's request for hearing due to its failure to appear. On November 22, 2016, Hearing Decision 16-UI-70375 became final without the employer having filed a request for a reopening. On December 16, 2016, the employer filed a late request for a reopening, which did not explain why the request was late. On December 21, 2016, ALJ Kangas issued 16-UI-73435, dismissing the employer's request as untimely without a showing of good cause. On January 6, 2016, the employer filed an application for review of Hearing Decision 16-UI-73435 with the Employment Appeals Board (EAB).

With its application for review, the employer submitted written argument in which it asserted that it failed to file a timely request for a reopening due to its "business being flooded with emergency services during that time period." The employer's argument is construed as a request for EAB to consider new information under OAR 471-041-0090(2) (October 29, 2016), which states that new information may be considered when the party offering the information establishes that the new information 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. However, the employer did not establish that factors or circumstances beyond its reasonable control prevented it providing offering its new information with its request for a reopening as required under OAR 471-040-0041(4) (February 10, 2012)¹ and instructed in Hearing Decision 16-UI-70375.² Nor is the employer's new information material to EAB's determination, given that it does not explain how its business being "flooded with emergency services during that time period" prevented it from filing a timely request for a reopening, or

¹ See Hearing Decision 16-UI-73435 at 3.

² Hearing Decision 16-UI-70375 at 2.

show that the employer filed its request within a reasonable time, seven days, after the circumstances that allegedly prevented a timely filing ceased to exist, as required under OAR 471-040-0041(4).³ The employer's request for EAB to consider its new information is therefore denied.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 16-UI-73435 is affirmed.

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

DATE of Service: January 26, 2017

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.

³ *See* Hearing Decision 16-UI-73435 at 3.