

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0143

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On November 23, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant filed a late weekly claim for benefits for the week of October 30 through November 5, 2016 (decision # 115713). On December 13, 2016, decision # 115713 became final without claimant having filed a request for hearing. On January 10, 2017, claimant filed a late request for hearing. On January 12, 2017, ALJ Kangas issued Hearing Decision 17-UI-74655, dismissing claimant's request for hearing subject to her right to renew the request by filing a response to an appellant questionnaire by January 26, 2017. On January 30, 2017, claimant filed her response to the appellant questionnaire, and a timely application for review of Hearing Decision 17-UI-74655 with Employment Appeals Board (EAB). On February 6, 2016, ALJ Kangas notified claimant that because her response was not filed by January 26, 2017, OAH would not consider the response or issue another hearing decision, and that Hearing Decision 17-UI-74655 remained in effect.

Claimant's filing of her response to the appellant questionnaire with her application for review is construed as a request for EAB to consider information not received into the hearing record. Under OAR 471-041-0090(1) (October 29, 2016), information offered, but not received into the hearing record, may be received into evidence as necessary to complete the record. Claimant's response to the appellant questionnaire is necessary to complete the record, and EAB therefore considered her response when reaching this decision.

CONCLUSIONS AND REASONS: Claimant's request for hearing on # 115713 is dismissed as untimely without good cause.

ORS 657.269 required claimant's request for hearing on decision # 115713 to be filed by December 13, 2016. It was filed on January 10, 2017 and therefore was late. Under ORS 657.875, the deadline for requesting a hearing may be extended a reasonable time upon a showing of good cause. "Good cause" exists 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) (February 10, 2012). However, good cause does

not include not understanding the implications of a decision when it is received OAR 471-040-0010(1)(b)(B).

Claimant's response to the appellant questionnaire indicates that she did not file a timely request for hearing on decision # 115713 because she did not understand it denied her benefits for the week at issue (week 44-16) until after the deadline for requesting a hearing. Under OAR 471-040-0010(1)(b)(B), however, claimant's failure to understand the implications of decision # 115713 when she received it does not constitute good cause for her failure to file a timely request for hearing. Claimant's request for hearing on decision # 115713 therefore is dismissed as untimely without good cause.

DECISION: Hearing Decision 17-UI-74655 is affirmed.

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

DATE of Service: February 9, 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.

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