

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0454**

*Affirmed*  
*Late Request for Hearing Denied*

**PROCEDURAL HISTORY:** On March 23, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 103434) concluding that claimant failed to actively search for work from January 10 through March 5, 2016 (weeks 2-16 through 9-16). On April 12, 2016, decision # 103434 became final without claimant having filed a request for hearing. On February 22, 2017, claimant filed a late request for hearing. On February 27, 2017, ALJ Kangas issued Hearing Decision 17-UI-77785, dismissing claimant's hearing request, subject to claimant's right to renew the request by responding to an appellant questionnaire within 14 days. Claimant timely responded to the appellant questionnaire. By letter March 16, 2017, the Office of Administrative Hearings cancelled Hearing Decision 17-UI-103434. On April 11, 2017, ALJ S. Lee conducted a hearing, and on April 14, 2017, issued Hearing Decision 17-UI-81099, dismissing claimant's hearing request as untimely without good cause. On April 19, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Claimant claimed unemployment benefits for the period from January 10 through April 23, 2016 (weeks 2-16 through 16-16). Audio recording at 15:55.

(2) On March 23, 2016, claimant contacted the Department and spoke to a representative about his work search requirements. Also on March 23, 2016, the Department mailed decision #103434 to claimant at the 1521 NE 8<sup>th</sup> St, Redmond, Oregon 97756-7755, which was and is his address of record with the Department. Claimant does not know if he received the decision. The decision may have arrived in the mailbox, been taken from the mailbox by claimant's girlfriend, and left for claimant in a pile with other mail. Audio recording at 8:54, 10:18.

(3) Sometime prior to February 22, 2017, claimant's supervisor told him that the Department was going to garnish his wages because he had been overpaid unemployment benefits. Audio recording at 12:03. On February 22, 2017, claimant contacted the Department to ask about the garnishment; he requested a hearing on decision # 103434 on that date.

**CONCLUSION AND REASONS:** We agree with the ALJ, and conclude that claimant failed to show good cause for his late hearing request.

ORS 657.269 provides that an administrative decision becomes final unless a party requests a hearing within 20 days of the date it was issued. Under ORS 657.875 the deadline for filing a request for hearing may be extended “a reasonable time” upon a showing of “good cause,” which 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) (February 10, 2012).

Claimant’s request for hearing on decision # 103434, which was filed slightly less than one year after the Department mailed the decision, was late. Claimant, however, asserted that he was unable to file a timely hearing request because he did not receive the decision, and only learned of its existence when the Department took action to garnish his wages. Claimant testified that he did not know if he had received the decision. In Appeals Board Decision 08-AB-2368 (December 5, 2008), we concluded that a party claiming not to have received an administrative decision “must, at a minimum state unequivocally that he or she did not receive it. Because claimant was unable to make such an unequivocal statement, and because he offered no other reason for his failure to timely file his hearing request, he did not demonstrate good cause for his untimely request, and it must be dismissed.

**DECISION:** Hearing Decision 17-UI-81099 is affirmed.

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

**DATE of Service:** April 25, 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](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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