

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0496**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On February 1, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 92210). Decision # 92210 stated that a timely request for hearing needed to be filed on or before February 21, 2017. On February 28, 2017, the employer filed by phone an untimely request for hearing. On March 3, 2017, ALJ Kangas reviewed that employer's hearing request and issued Hearing Decision 17-UI-78099, dismissing the employer's request untimely, subject to the right to renew the request by filing a response to the Appellant Questionnaire enclosed with the decision within 14 days after the decision was mailed. On March 15, 2017, the employer filed the Appellant Questionnaire. On March 28, 2017, the Office of Administrative Hearings (OAH) scheduled a hearing for April 11, 2017. On April 11, 2017, ALJ Frank conducted a hearing, and on April 14, 2017 issued Hearing Decision 17-UI-80982, dismissing the employer's request for hearing. On May 1, 2017, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer submitted a written argument that contained information not offered during the hearing about the reasons claimant was discharged. Although EAB may consider new information under certain circumstances, that information must be relevant and material to the issues before EAB. OAR 471-041-0090(2)(a) (October 29, 2006). Because the issue on review was whether the employer had good cause for filing a late request for review and did not implicate the facts underlying claimant's discharge, the new information that employer sought to present was not relevant and material. EAB therefore did not consider the new information that the employer sought to present by way of its written argument.

**FINDINGS OF FACT:** (1) On February 1, 2017, the Department mailed decision # 92210 to the employer's address of record in Hillsboro, Oregon. Sometime before the middle of February 2017, the employer received and its president read decision # 92210. Decision #92210 stated that a request for hearing on that decision needed to be filed on or before February 21, 2017. The employer's president was aware that the deadline to request a hearing on claimant's discharge was February 21, 2017. A request for hearing form was included in the envelope in which decision #92210 was mailed.

(2) On approximately February 7, 2017 and February 14, 2017, the employer's president called the Department with the intention of requesting a hearing on decision # 92210 but was not successful reaching a representative to take the request.

(3) On February 14, 2017, the Department mailed an "Administrative Charge Relief Decision" informing the employer that its unemployment insurance account would not be relieved from charges based on claimant's work separation because decision # 92210 found that claimant work separation was not disqualifying. Exhibit 3 at 2. The "Administrative Charge Relief Decision" stated that a request for hearing on that decision needed to be filed on or before March 6, 2017 to be timely. That decision did not have enclosed with it a form to complete to request a hearing.

(4) On February 28, 2017, claimant called the Department to request a hearing on decision #92210 and reached a representative who took that request.

**CONCLUSIONS AND REASONS:** The employer's request for hearing is dismissed.

ORS 657.269 states that a party must file a request for hearing no later than 20 days after an administrative decision is mailed to the party's last known address or the administrative shall become final. ORS 657.875 states that the 20 day period in which a party may file a request for hearing may be extended for a reasonable time upon a showing of good cause. OAR 471-040-0010(1) (February 10, 2012) states that "good cause" to file a late request for hearing exists when the action, delay or failure to act arises from an excusable mistake or from factors beyond the applicant's reasonable. A "reasonable time" to extend the period in which a request for hearing may be filed is seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0010(3).

From the testimony of the employer's president, it appears that the employer received decision # 92210 sometime before approximately February 7, 2017. Audio at ~15:05. At that time, the president read decision #92210 and was aware that if he disagreed with its result he was required to file a request for hearing no later than February 21, 2017, which was at least two weeks in the future. Audio at ~14:18. The president testified that no form on which to request a hearing by mail or fax was included with decision #92210, so he subsequently called the Department twice during the 20 days in which the employer's request for hearing would have been timely, on February 7 and 14, 2017, intending to request a hearing on decision # 92210, but was unable to reach a person who could take that request. Audio at ~15:08. That the president tried only twice to request a hearing by phone during the period that the request would have been timely filed does not constitute good cause to extend the filing deadline. Two phone attempts are insufficient to show that the employer was prevented by factors beyond its reasonable control from requesting a hearing on or before February 21, 2017, the date, according to the president's testimony, that the employer knew was the deadline for filing the request for hearing. It was well within the president's reasonable control to make additional attempts to contact the Department and file a hearing request by phone between February 14 and February 21, 2017, as well as to submit a written hearing request during that period by fax or by mail.

The documentary exhibits the employer submitted suggest that the reason the employer did not timely file the request for hearing on decision # 92210 was because the president confused the February 21, 2017 deadline for requesting a hearing on that decision with the March 6, 2017 deadline for requesting a hearing on the administrative charge relief decision. Exhibit 3 at 3; Audio at ~16:25. However, were

that the case, it was a matter well within the employer's reasonable control to carefully review the texts of both decisions, distinguish between them and comprehend that the deadline for submitting a request for hearing on decision # 92210 was February 21, 2017 and not March 6, 2017.

As well, the president's unsuccessful attempts to file a telephone request for hearing by February 21, 2017 or any confusion he might have had between the filing dates for decision # 92210 and the administrative charge relief decisions did not arise from an "excusable mistake" for purposes of establishing good cause for filing a late request for hearing because that 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. *See Appeals Board Decision, 2016-EAB-1535 at 2 (December 28, 2016).*

In sum, the employer failed to establish good cause for failing to file a timely request for hearing on decision # 92210. The employer's request for hearing filed on February 28, 2017 therefore is dismissed. Hearing decision # 92210 remains undisturbed.

**DECISION:** Hearing Decision 17-UI-80982 is affirmed

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

**DATE of Service:** May 31, 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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