

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0511

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On February 2, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 135331). On February 22, 2017, decision # 135331 became final without claimant having filed a timely request for hearing. On March 29, 2017, claimant filed a late request for hearing by phone. On April 3, 2017, ALJ Kangas issued Hearing Decision 17-UI-80106, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by April 17, 2017. On April 18, 2017, claimant filed a late response to the appellant questionnaire and a timely application for review of Hearing Decision 17-UI-80106. On May 1, 2017, ALJ Kangas mailed a letter to claimant stating that because his response to the appellant questionnaire was late, the Office of Administrative Hearings (OAH) would not consider it or issue another hearing decision, and that Hearing Decision 17-UI-80106 remained in effect.

EVIDENTIARY MATTER. With his application for review, claimant included a copy of his appellant questionnaire which he submitted to OAH after the April 17 deadline set by ALJ Kangas. Claimant's filing of his response to the appellant questionnaire with his 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 his response when reaching this decision. Claimant's response to the appellant questionnaire has been marked as EAB Exhibit 1, and a copy of EAB Exhibit 1 is included with this decision. Any party that objects to the admission of EAB Exhibit 1 must submit its objection in writing to EAB within 10 days of the date on which this decision was mailed. If no objection is received, or an objection is received and overruled, EAB Exhibit 1 will remain part of the record.

FINDINGS OF FACT: (1) Claimant likely received notice of decision # 135331 shortly after the Department mailed it to him on February 2, 2017. The deadline for requesting a hearing on decision # 135331 expired on February 22, 2017 without claimant having requested a hearing on it.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant's late request for hearing on decision # 135331 is subject to dismissal.

ORS 657.269 provides that the Department's decisions become final unless a party files a request for hearing within 20 days after the date it is mailed. ORS 657.875 provides that the 20-day deadline may be extended a "reasonable time" upon a showing of "good cause." OAR 471-040-0010 (February 10, 2012) provides that "good cause" includes factors beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors ceased to exist.

In this case, the deadline for claimant to file a timely request for hearing on decision # 135331 expired on February 22, 2017; claimant did not file his request for hearing until more than seven weeks later, on March 29, 2017, making his request late. In his responses to the appellant questionnaire, claimant asserted that he did not receive decision # 135331 until March 29, 2017, the same day he filed his late request for hearing. EAB Exhibit 1. However, claimant did not offer any explanation concerning why he did not receive, or may not have received, the decision until that date, such as problems he may have been experiencing with his mail. Without any such explanation, claimant has not shown good cause to overcome the presumptions of delivery and the receipt of mail within one to three days of the mailing date¹, to extend the deadline for requesting a hearing in this case. For that reason, we agree with the ALJ that claimant's late request for hearing on decision # 135331 must be dismissed.

DECISION: Hearing Decision 17-UI-80106 is affirmed.

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

DATE of Service: May 12, 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.

¹ Under OAR 137-003-0520 (January 31, 2012), documents sent through the US Postal Service are presumed to have been received by the addressee, subject to evidence to the contrary.

We also take notice of the generally cognizable fact that first class mail shipped through the United States Postal Service generally takes 1-3 days to deliver to the designated recipient, making it more likely than not that claimant received decision # 135331, mailed on February 2, 2017, between February 3 and February 5, 2017. See <https://www.usps.com/ship/first-classmail.htm>. 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. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

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