

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0528

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On December 2, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 63519) concluding that claimant did not actively seek work from October 23 through November 5, 2016. On December 22, 2016, decision # 63519 became final without a request for hearing having been filed. On April 6, 2017, claimant filed an untimely request for hearing. On April 11, 2017, ALJ Kangas issued Hearing Decision 17-UI-80730, dismissing claimant's hearing request as untimely, subject to claimant's right to renew the request by responding to an appellant questionnaire within 14 days. On April 27, 2017, claimant filed an application for review with the Employment Appeals Board (EAB) and submitted his response to the appellant questionnaire to the Office of Administrative Hearings (OAH). By letter dated May 4, 2017, OAH informed his response to the appellant questionnaire would not be considered because it was late.

EVIDENTIARY MATTER: Claimant's submission of his response to the appellant questionnaire with his application for review is construed as a request for EAB to consider information offered into evidence, but not received into the hearing record, under OAR 471-041-0090(1) (October 29, 2016), which allows EAB to receive such information into evidence a 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.

CONCLUSION AND REASONS: Claimant failed to show good cause for filing an untimely hearing request, and his request for hearing must be dismissed.

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 is it 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.

Here, claimant filed his request for a hearing on decision # 63519 over four months after it was issued. Claimant provided no plausible reason for the late filing. In response to the question why he did not file his hearing request before the deadline specified in the administrative decision, claimant responded that “I spoke with a lady on [the] phone.” EAB Exhibit1. Without any further information about the person to whom he spoke, when the conversation occurred, and what he was told during this conversation, we have no basis to conclude that any circumstances beyond claimant’s reasonable control or excusable mistake caused him to file an untimely hearing request, nor a basis upon which to conclude that he filed within the seven-day “reasonable time” period after those circumstances ceased to exist. Claimant’s hearing request must therefore be dismissed as untimely.

DECISION: Hearing Decision 17-UI-80730 is affirmed.

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

DATE of Service: May 17, 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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