

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0568**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On October 25, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 75119). On November 14, 2016, decision # 75119 became final without claimant having filed a timely request for hearing. On March 17, 2017, claimant filed a late request for hearing by phone. On March 21, 2017, ALJ Kangas issued Hearing Decision 17-UI-79354, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by April 4, 2017. On April 3, 2017, claimant responded to the questionnaire. On April 5, 2017, the Office of Administrative Hearings (OAH) mailed a letter that stated Hearing Decision 17-UI-79354 was canceled. On April 12, 2017, OAH mailed notice of a hearing scheduled for April 26, 2017. On April 26, 2017, ALJ Meerdink conducted a hearing and issued Hearing Decision 17-UI-81884, re-dismissing claimant's late request for hearing on decision # 75119. On May 10, 2017, claimant filed an application for review of Hearing Decision 17-UI-81884 with the Employment Appeals Board (EAB).

On June 1, 2017, EAB received claimant's written argument by fax. The written argument was due on May 31, 2017, however, and the deadline has not been extended. Because claimant's argument was not received by EAB within the time period allowed under OAR 471-041-0080(1) (October 29, 2006), the argument was not considered by EAB when reaching this decision. Even if we had received the argument within the time allowed, the outcome of this decision would remain the same for the reasons explained herein.

We note that the argument also included new information about claimant's mental state around the time of the events at issue. That information is new because, until the written argument, claimant had attributed his varying reports about the date he learned of decision # 75119 to having been in a "rush," and not to mental health issues. Audio recording at ~ 20:30. Because claimant failed to explain why he did not provide the information at the time of the hearing, or show that factors or circumstances beyond his reasonable control prevented him from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006), the new information would not be considered by EAB and therefore would not have changed the outcome of this decision even if claimant had submitted his written argument within the time allowed.

**FINDINGS OF FACT:** (1) Claimant changed residences and stopped claiming benefits. The Department mailed notice of decision # 75119 to claimant's former address, and claimant did not receive it.

(2) Claimant found out about decision # 75119 on March 9, 2017, at the latest. He waited eight days after that date to request a hearing.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant's late 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 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.

Claimant did not receive decision # 75119 because the Department did not mail it to the address at which he resided. Assuming for the sake of argument that claimant's non-receipt of the decision amounted to "good cause" to extend the filing deadline, the deadline may only be extended seven days after the circumstances that caused claimant to need the extension ceased to exist. In this case, claimant claimed at the hearing that he received notice of decision # 75119 on March 17, 2017. However he also reported on the appellant questionnaire that he found out about decision # 75119 on March 9, 2017, and testified at the hearing that he received information about the overpayment based on decision # 75119 in March, through a document dated March 2, 2017. Audio recording at ~ 10:00. Given the varying and unreliable reports by claimant about the date on which he received notice of decision # 75119, the preponderance of the evidence in the record does not support a finding that he received it on March 17<sup>th</sup> and requested a hearing within "a reasonable time" of that date. The circumstance that prevented him from filing a timely request for hearing on that decision – his non-receipt of it – more likely than not ceased to exist either shortly after March 2, 2017 or on March 9, 2017, and claimant did not file his late request for hearing until March 17, 2017, which is, at a minimum, eight days after he found out about it. The administrative rule that applies to late requests for hearing does not allow the deadline to be extended eight days, it only allows seven days, and anything beyond seven days is not considered to be "a reasonable time." Because claimant did not establish that it was more likely than not that he requested a hearing within the seven-day "reasonable time," his request must be dismissed. Decision # 75119 therefore remains undisturbed.

**DECISION:** Hearing Decision 17-UI-81884 is affirmed.

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

**DATE of Service:** June 2, 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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