

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0697

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On March 6, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant refused a work opportunity without good cause (decision # 122839). On March 27, 2017, decision # 122839 became final without claimant having filed a timely request for hearing. On May 11, 2017, claimant filed a late request for hearing by phone. On May 16, 2017, ALJ Kangas issued Hearing Decision 17-UI-83470, dismissing claimant's late request for hearing, subject to his right to renew the request by responding to an appellant questionnaire by May 30, 2017. On May 31, 2017, claimant filed a late response to the appellant questionnaire but a timely application for review of Hearing Decision 17-UI-83470. On June 8, 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-83470 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 May 30, 2017 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.

CONCLUSIONS AND REASONS: Claimant's request for hearing should be dismissed as untimely without a showing of good cause.

Under ORS 657.269, claimant's request for hearing on decision # 122839 was required to be filed by March 27, 2017. Claimant filed the hearing request by telephone on May 11, 2017 and therefore it was late. Under ORS 657.875, the deadline for requesting a hearing may be extended "a reasonable time" upon a showing of good cause. "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control, and includes the failure to receive a document because the Department mailed it to an incorrect address despite having the correct address. OAR 471-040-0010(1) (February 10, 2012). However, good cause does not include the failure to receive a document due to not notifying the Department of an updated address while the person is claiming benefits, or not understanding the implications of a decision or notice when it is received. *Id.* OAR 471-040-0010(1) (February 10, 2012). "A reasonable time," is seven days after the circumstances that prevented a timely filing ceased to exist. 471-040-0010(3).

In his response to the appellant questionnaire, in answering a question regarding the date on which he received the administrative decision, claimant responded, "I do not know, I moved." EAB Exhibit 1. In his response to the questionnaire, in answering a question regarding why he did not file his hearing request before the deadline stated in the administrative decision, claimant responded, "I was moving & in training for a new job." *Id.* Even if we infer that claimant did not receive notice of decision # 122839 until after the deadline for filing a request for hearing, absent evidence as to when claimant moved, started having his mail delivered to his new address, and notified the Department of his new address, we cannot find that his delay in receiving the decision was the result of circumstances that constituted good cause under OAR 471-040-0010(1). Nor, absent evidence as to when claimant actually received notice of decision # 122839, can we find that claimant filed his request within "a reasonable time" after receiving it.

Accordingly, we agree with the ALJ that claimant's late request for hearing should be dismissed.

DECISION: Hearing Decision 17-UI-83470 is affirmed. The request for hearing filed May 11, 2017 is dismissed. Administrative decision #122839, mailed March 6, 2017, remains undisturbed.

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

DATE of Service: June 26, 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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