

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-0726

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On April 26, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work with good cause (decision # 90548). On May 16, 2017, decision # 90548 became final without the employer having filed a timely request for hearing. On May 23, 2017, the employer filed a late request for hearing. On May 24, 2017, ALJ Kangas issued Hearing Decision 17-UI-84173, dismissing the employer's late request for hearing subject to the employer's right to renew the request by responding to an appellant questionnaire by June 7, 2017. The employer did not respond by June 7, 2017. On June 13, 2017, the employer submitted its late response to the appellant questionnaire and filed a timely application for review with the Employment Appeals Board (EAB). On June 15, 2017, ALJ Kangas mailed a letter stating that the employer's response to the appellant questionnaire was late and that OAH would not consider it. This matter is before EAB on the employer's timely application for review of Hearing Decision 17-UI-84173.

With its application for review, the employer submitted an appellant questionnaire that is not part of the hearing record. New information is admissible before EAB only if it is relevant and material to the issue before EAB and factors or circumstances beyond the employer's reasonable control prevented the employer from offering it into evidence. OAR 471-041-0090 (October 29, 2006). The ALJ's refusal to admit the questionnaire or consider it appears to have been beyond the employer's control. The questionnaire is therefore marked as EAB Exhibit 1 and admitted into evidence. 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. Unless such objection is received and sustained, the noticed fact will remain in the record.

FINDINGS OF FACT: The employer was "not sure" what date he received notice of decision # 90548, or what date he filed a request for hearing; he thought he had mailed it until he found it in a stack of mail. EAB Exhibit 1. The employer also thought that claimant had not filed her claims "against" the employer.

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

Under ORS 657.269, the employer's request for hearing on decision # 90548 was required to be filed by May 16, 2017. The employer filed the hearing request on May 23, 2017, making the request 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. 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. OAR 471-040-0010(3).

The employer filed a late request for hearing in this matter because he mistakenly thought he had already filed a timely one. It was within the employer's reasonable control to keep track of such matters. Although the employer's late filing was likely due to a mistake, the mistake was not excusable because it does not, for example, raise a due process issue or result from inadequate notice, reasonable reliance on another or the inability to follow directions despite substantial efforts to comply. Because the employer's late filing was not the result of a circumstance beyond his reasonable control or an excusable mistake, he has not shown good cause to extend the filing deadline and his late request for hearing must be dismissed.

We note that the employer's appellant questionnaire response suggests that he might feel that the decision in this matter was issued by mistake, because he understood from claimant and the "site claims site" that claimant "filed nothing against me." The laws applicable to the Department dictate, however, that when an individual files a claim for benefits, the Department investigates the individual's claim and determines which employers in claimant's employment history are entitled to notice of potentially adverse action, for example, potential taxation, and which employment in claimant's past is relevant to whether she is subject to disqualification from receiving benefits, for example, because of a work separation. *See e.g.* ORS 657.150; ORS 657.155; ORS 657.265 *et seq.* Claimants are required to furnish the Department with information about their prior employers. *See* OAR 471-030-0025. However, an individual does not, and may not, file "against" any particular employer or previous employer; the determination of whether any employer is entitled to notice of unemployment proceedings or subject to potential taxation is entirely up to the Department based upon its application of the relevant laws and administrative rules. If the employer has any questions about the effect or potential effect claimant's unemployment insurance claim will have on the employer, the employer should contact the Department for information.

DECISION: Hearing Decision 17-UI-84173 is affirmed.

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

DATE of Service: July 10, 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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