

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1015-R**

*Reconsideration Granted*  
*Appeals Board Decision 2017-EAB-1015 Adhered to on Reconsideration*

**PROCEDURAL HISTORY:** On May 22, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 114532). On June 12, 2017, the decision became final without claimant having filed a request for hearing. On July 27, 2017, claimant filed a late request for hearing. On July 31, 2017, ALJ Kangas issued Hearing Decision 17-UI-89257, dismissing claimant's request for hearing as untimely, subject to claimant's right to provide the her hearing request by timely responding to an appellant questionnaire by August 14, 2017. Claimant did not timely respond to the appellant questionnaire. On August 21, 2017, Hearing Decision 17-UI-89257 became final without claimant having filed an application for review with the Employment Appeals Board (EAB). On August 22, 2017, claimant filed a late application for review with EAB and a response to the appellant questionnaire included with Hearing Decision 17-UI-89257. On August 28, 2017, EAB issued Appeals Board Decision 2017-EAB-1015, dismissing claimant's application for review as untimely. On September 15, 2017, EAB received claimant's request for reconsideration. EAB will exercise its discretion under ORS 657.290(3) to address some of the issues raised in claimant's written argument.

**CONCLUSIONS AND REASONS:** Claimant's late application for review remains dismissed.

Hearing Decision 17-UI-89257 stated that claimant could appeal that hearing decision by filing an application for review with EAB no later than August 21, 2017. In Appeals Board Decision 2017-EAB-1015, EAB dismissed claimant's application for review of Hearing Decision 17-UI-89257 as untimely without a showing of good cause. In her request for reconsideration, claimant described problems she encountered sending documents to the Office of Administrative Hearings (OAH) that allegedly impeded her from timely filing the application for review of Hearing Decision 17-UI-89257. However, claimant's written argument lacks the dates that she faxed or mailed documents to OAH, and thus lacks sufficient information for EAB to reliably infer that claimant faxed or mailed her application for review on or before August 21, 2017. Claimant referred to a WorkSource office employee who faxed a document for her, but did not state what date she faxed the document. Employment Department records show that claimant told the Department on August 23, 2017 that an employee from the Oregon City WorkSource office told claimant they had faxed claimant's "7 page fax" to OAH "yesterday," but OAH

had not received the documents, and they were mistakenly sent to “UI Imaging.”<sup>1</sup> Because “yesterday” referred to August 22, neither Employment Department records nor the other information in claimant’s argument show claimant sent her documents to OAH or EAB by August 21, 2017.

Even if EAB allowed claimant’s late application for review by EAB and considered her written argument and request for reconsideration, EAB would affirm the dismissal of her late request for hearing on decision # 114532 as untimely without good cause. There is no evidence to show that claimant did not receive decision # 114532 stating that claimant was denied benefits on her claim beginning April 16, 2017, and that claimant had the right to appeal the decision by no later than June 12, 2017 if she did not believe it was correct. Claimant explained in her written argument that she filed her request for hearing late regarding decision # 114532 because she had already been allowed benefits based on her work separation from one employer, and did not understand that she could be simultaneously denied benefits based on work separations from another employer, especially an employer for which she had only worked for four days. Claimant also explained that she did not contact the Department about her benefits until “the end of July,” because she did not understand there was an issue with her claim until she stopped receiving benefits. Claimant’s arguments show that the cause of her late request for hearing on decision # 114532 to OAH was her misunderstanding of the implications of that decision, which is not good cause for a late request for hearing. *See* OAR 471-040-0010(1)(b)(B) (February 10, 2012). Claimant’s late request for hearing therefore was untimely without good cause, and would be dismissed.

For the reasons explained above, we find no error of fact or law in our decision that would require correction, and adhere to Appeals Board Decision 2017-EAB-1015 on reconsideration. *See* ORS 657.290(3) (reconsideration by EAB may include making a new decision “to the extent necessary and appropriate for the correction of a previous error of fact or law”).

**DECISION:** The application for review filed August 22, 2017 is dismissed. Hearing Decision 17-UI-89257 remains undisturbed.

J. S. Cromwell and D. P. Hettle.

**DATE of Service:** September 21, 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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<sup>1</sup> We take official notice of this information contained in Employment Department records of claimant’s contacts with the Department. Any party that objects to our so doing must submit its objection to this office in writing, setting forth the basis of the objection, within ten days of the date on which this decision is mailed. OAR 471-041-0090(3) (October 29, 2006). Unless such an objection is received and sustained, the noticed information will remain in the record.