

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1022**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On April 19, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant failed without good cause to accept suitable work when offered (decision # 144548). On May 9, 2017, decision # 144548 became final without claimant having filed a timely request for hearing. On June 16, 2017, claimant filed a late request for hearing. On June 21, 2017, ALJ Kangas issued Hearing Decision 17-UI-86204, dismissing claimant's late request for hearing subject to claimant's right to renew the request by responding to an appellant questionnaire by July 5, 2017. On July 5, 2017, claimant responded to the appellant questionnaire and the Office of Administrative Hearings (OAH) cancelled Hearing Decision 17-UI-86204. On July 17, 2017, OAH scheduled a hearing to address the timeliness of claimant's hearing request and, if appropriate, the merits of the underlying decision on appeal. On August 10, 2017, ALJ Frank conducted the scheduled hearing, and on August 11, 2017, issued Hearing Decision 17-UI-90194 re-dismissing claimant's late request for hearing, leaving the Department's April 19 decision undisturbed. On August 24, 2017, claimant filed a timely application for review of Hearing Decision 17-UI-90194 with the Employment Appeals Board (EAB).

Claimant submitted a written argument to EAB that presented facts not offered into evidence during the hearing. Claimant did not sufficiently explain why he was unable to present this information during the hearing, or otherwise show as required by OAR 471-041-0090 (October 29, 2006), that factors or circumstances beyond his reasonable control prevented him from doing so. Accordingly, EAB considered only information received into evidence at the hearing when reaching this decision.

**FINDINGS OF FACT:** (1) On or about May 2, 2017, claimant received and read decision # 144548, which notified him that any appeal from the decision had to be filed by May 9, 2017 to be timely. On May 2, 2017, claimant contacted the Department by telephone to discuss the decision's findings and reasoning with the author of the decision, who was unavailable. Claimant was advised by the Department employee he spoke with that he could request a hearing, but claimant chose instead to leave a voicemail for the adjudicator who wrote the decision. Claimant did not request a hearing by May 9, 2017 because he wanted to discuss the matter with the adjudicator before deciding whether to request a hearing and was unable to speak with the adjudicator before that date.

(3) On May 15, 2017, the adjudicator returned claimant's call without success but left a voice message for claimant. On May 17, claimant unsuccessfully returned the adjudicator's call and left another voice message for the adjudicator. On May 22, 2017, the adjudicator documented that he made several unsuccessful attempts to contact claimant and that he sent him an email that day further explaining his decision and advising claimant to contact the Department with questions.

(3) On June 16, 2017, claimant contacted the Department and requested a hearing by telephone.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing is dismissed.

Under ORS 657.269, claimant's request for hearing on decision # 144548 was required to be filed by May 9, 2017 to be timely. Claimant filed the hearing request on June 16, 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).

Claimant filed a late request for hearing in this matter because he wanted to discuss the decision's findings and reasoning with the adjudicator in question before deciding whether to request a hearing and was unable to speak with the author of the decision by May 9, 2017. Claimant admitted that although he was given the opportunity to request a hearing by telephone on May 2 and understood that the stated deadline was May 9, he believed that he would still be able to file a hearing request after May 9 after discussing the matter with the adjudicator. Audio Record ~ 24:00 to 29:00. Claimant was mistaken in his belief and his mistake was not excusable because it did 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 claimant'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. Decision # 144548 remains undisturbed.

**DECISION:** Hearing Decision 17-UI-90194 is affirmed.

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

**DATE of Service:** September 18, 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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