

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1030**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On May 15, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$730 overpayment, \$109.50 monetary penalty and 52 penalty weeks (decision # 195375). On June 4, 2013, decision # 195375 became final without claimant having filed a timely request for hearing. On July 26, 2017, claimant filed a late request for hearing by phone. On July 31, 2017, ALJ Kangas issued Hearing Decision 17-UI-89226, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by August 14, 2017. On August 11, 2017, claimant responded to the questionnaire. On August 16, 2017, ALJ Kangas reviewed claimant's response and issued Hearing Decision 17-UI-90510, re-dismissing claimant's late request for hearing. On August 24, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** Sometime in 2013, claimant received decision # 195375. He was working 60 hour weeks at the time and was too busy with work to request a hearing. He filed a late request for hearing when he did because he was "turned down" for unemployment. At all relevant times, claimant has been functionally illiterate and required assistance to fill out forms or write statements.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant's late request for hearing must be dismissed.

ORS 657.269 provides that individuals have 20 days from the date an administrative decision is issued to file a timely request for hearing. 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(1) (February 10, 2012) defines "good cause" as "an excusable mistake or from factors beyond an applicant's reasonable control." OAR 471-040-0010(3) defines a "reasonable time" as "seven days from the after the circumstances that prevented a timely filing ceased to exist."

Claimant's request for hearing in this case is well over four years late. Claimant has not shown good cause to extend the filing deadline, and he has not shown that he acted within a reasonable time. Although claimant was busy with work and it likely would not have been easy, claimant did not show

that he was prevented from dealing with the case around his busy work schedule, particularly considering that requesting a hearing only required that he send in a pre-filled form attached to the decision or place a telephone call. Although claimant is functionally illiterate, which further complicated things, he was capable of filing an unemployment insurance claim, claiming weeks of benefits and responding to paperwork related to this appeal, albeit with help. Also notable is that claimant did not claim he did not receive decision # 195375 when it was sent, or did not know what the decision was about when he received it, suggesting that claimant knew about and made a choice not to dispute the decision upon receiving it. Even if we had concluded that claimant's work schedule or illiteracy amounted to good cause, the outcome would remain the same because he did not establish when he filed his latest claim for unemployment benefits or what date he found out that he was "turned down" for benefits. He therefore did not show that he filed his late request for hearing within the seven-day "reasonable time" period after he found out about being turned down. For those reasons, claimant has not established that the deadline for requesting a hearing in this case should be extended.

With his application for review claimant submitted a written statement that had more detail about his circumstances than his response to the questionnaire, including that he was "unable to attend the initial hearing because I was working 10 hour days . . . and was unable to take time off for fear of being laid off. \* \* \* It has taken a long time for me to deal with this situation because I am illiterate and have been working steadily from that time until recently. I was denied a hearing and would like the consideration of a new hearing." We cannot consider the contents of claimant's written statement because it is new information and claimant did not write on the statement that he sent a copy to the other party to this case whose address was on the forms he used to file his application for review as required. *See* OAR 471-041-0080; OAR 471-041-0090. Even if we had been able to consider claimant's argument, the outcome of this decision would still remain the same because it did not establish that good cause existed or that he acted within the seven-day reasonable time period.

Claimant's late request for hearing must be dismissed. Decision # 195375 therefore remains undisturbed.

**DECISION:** Hearing Decision 17-UI-90510 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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