

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1098

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On July 26, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from May 14, 2017 to July 22, 2017 (decision # 92719). On August 15, 2017, decision # 92719 became final without claimant having filed a timely request for hearing. On August 16, 2017, claimant filed a late telephone request for hearing. On August 22, 2017, ALJ Kangas issued Hearing Decision 17-UI-90824, dismissing claimant's late request for hearing subject to her right to renew the request by responding to an appellant questionnaire by September 5, 2017. On September 11, 2017, claimant responded to the appellant questionnaire and submitted an application for review of Hearing Decision 17-UI-90824 with the Employment Appeals Board (EAB). On September 14, 2017, ALJ Kangas mailed claimant a letter stating that her appellant questionnaire response was late and would not be considered by the Office of Administrative Hearings (OAH). This matter comes before EAB pursuant to claimant's September 11, 2017 application for review.

EVIDENTIARY MATTER: With her application for review, claimant submitted the appellant questionnaire response she had offered into evidence at OAH. The materials include a half-page handwritten statement dated 9/11/17 and a one-page document titled "Appellant Questionnaire." Those two pages are hereby marked as EAB Exhibit 1 and received into evidence as necessary to complete the record pursuant to OAR 471-040-0090(1) (October 29, 2006). 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 two pages will remain in the record marked as EAB Exhibit 1.

FINDINGS OF FACT: Claimant filed her late request for hearing one day late because of "unseen circumstances with dealing with a loss of our family member due to suicide." See EAB Exhibit 1.

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

ORS 657.269 provides that parties have 20 days after issuance of the Department's decision to file a request for hearing. ORS 657.875 provides that the 20-day period may be extended "a reasonable time"

upon a showing of “good cause.” OAR 471-040-0040(1) defines “good cause” as an excusable mistake or factors beyond an applicant’s reasonable control, such as failure to receive a document because the Department sent it to the wrong address despite having the correct one or unanticipated loss of telephone service during a telephone hearing.

The circumstances under which claimant filed her request for hearing after the deadline expired were unfortunate, but did not establish good cause. On this record, we cannot conclude that filing a timely request for hearing was beyond claimant’s reasonable control, and while not filing a timely request for hearing was probably due to a mistake of some sort it was not an excusable mistake because it did not, for example, raise a due process issue or result from inadequate notice, reasonable reliance on another, or the inability follow directions despite substantial efforts to comply. In the absence of a showing of good cause, the deadline for claimant’s request for hearing in this case may not be extended, and her late request for hearing must be dismissed. Decision # 92719 therefore remains undisturbed.

DECISION: Hearing Decision 17-UI-90824 is affirmed.

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

DATE of Service: September 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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