

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1207

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On April 3, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from February 19, 2017 to March 4, 2017 and was overpaid \$932.00 (decision # 101210). On April 24, 2017, decision # 101210 became final without claimant having filed a timely request for hearing. On September 19, 2017, claimant filed a late request for hearing by telephone. On September 25, 2017, ALJ Kangas issued Hearing Decision 17-UI-93201, dismissing claimant's late request for hearing subject to her right to renew the request by responding to an appellate questionnaire by October 9, 2017. On October 16, 2017, claimant submitted a late response to the appellate questionnaire to the Office of Administrative Hearings (OAH) and filed a timely application for review with the Employment Appeals Board (EAB). On October 18, 2017, ALJ Kangas sent a letter to claimant stating that OAH would not review claimant's response to the appellate questionnaire because it was submitted after the October 9th response deadline had passed.

With her application for review, claimant submitted the appellant questionnaire response she had offered into evidence at OAH, which is new information because claimant had offered it into evidence at OAH and OAH refused to consider it. EAB may consider new information if it is relevant and material to EAB's determination and the party offering the information demonstrates that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. OAR 471-040-0090 (October 29, 2006). The ALJ's refusal to consider claimant's appellant questionnaire was a circumstance beyond her reasonable control. Claimant's appellant questionnaire is therefore marked as EAB Exhibit 1 and admitted into the record. Any party who 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 at EAB Exhibit 1.

FINDINGS OF FACT: When claimant received and reviewed the Department's notice of decision # 101210, she did not closely read it. She "though[t] they were papers for records so did not look closely enough @ them." 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 closely reading mail from the Department and 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 # 101210 therefore remains undisturbed.

DECISION: Hearing Decision 17-UI-93201 is affirmed.

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

DATE of Service: November 15, 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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