

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1248

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On June 27, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant did not actively seek work from May 28, 2017 to June 24, 2017 and was overpaid \$1,502 (decision # 121927). On July 17, 2017, decision # 121927 became final without claimant having filed a timely request for hearing. On September 1, 2017, claimant filed a late request for hearing. On September 6, 2017, ALJ Kangas issued Hearing Decision 17-UI-91975, dismissing claimant's late request for hearing subject to her right to renew the request by responding to an appellant questionnaire by September 20, 2017. On September 9, 2017, claimant responded to the appellant questionnaire. On September 12, 2017, the Office of Administrative Hearings (OAH) mailed a letter canceling the hearing decision. On October 19, 2017, ALJ Murdock conducted a hearing, and on October 20, 2017 issued Hearing Decision 17-UI-95056, re-dismissing claimant's late request for hearing. On November 13, 2017, claimant filed an application for review of Hearing Decision 17-UI-95056 with the Employment Appeals Board (EAB).

EAB considered claimant's argument when reaching this decision, to the extent it was relevant and material to the late request for hearing issue.

FINDINGS OF FACT: Although the Department mailed notice of decision # 121927 to claimant's address of record, claimant did not receive it due to mail thefts. Claimant learned of decision # 121927 when she received a bill for the overpayment and, on August 8, 2017, called the Department to ask about it. She received a copy of decision # 121927 within a few days of August 8, 2017, and requested a hearing several weeks later on September 1, 2017. Between August 8, 2017 and September 1, 2017 claimant was trying to reach various Department employees about the merits of decision # 121927 and was talking about her layoff with the employer.

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant's late request for hearing must be 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, but does not include not understanding the implications of a decision or notice when it is received. OAR 471-040-0040(3) defines “reasonable time” as seven days after the circumstances that prevented a timely filing ceased to exist.

To the extent the circumstance that prevented claimant’s timely filing was her confusion over the finality of decision # 121927 and efforts to confer with Department staff or her employer about the layoff and reason the Department reached the decision it did, claimant did not have good cause to extend the filing period. Those circumstances, as described at the hearing, did not make filing a timely request for hearing a circumstance beyond her reasonable control. While she might have been mistaken about what she needed to do to respond to decision # 121927, the mistake 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 to follow direction despite substantial efforts to comply.

To the extent the circumstance that prevented claimant’s timely filing was the mail theft, she did have “good cause” to extend the filing period “a reasonable time.” The mail theft was beyond her reasonable control and deprived her of the opportunity to learn about the administrative decision and timely respond to it. The filing period may therefore be extended “a reasonable time,” which is seven days after the date the circumstance that prevented claimant’s timely filing, that is, her lack of knowledge of decision # 121927, ceased to exist. It appears on this record that claimant learned about the existence of that decision on August 8, 2017 and received a copy of it within a few days. She therefore had seven days from August 8, 2017 to file her request for hearing within “a reasonable time.” Seven days from August 8, 2017 is August 15, 2017. Claimant did not file her late request until September 1, 2017, however, so it was not filed within a “reasonable time” and must be dismissed, and decision # 121927 must therefore remain undisturbed.¹

DECISION: Hearing Decision 17-UI-95056 is affirmed.

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

DATE of Service: November 20, 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.

Please help us improve our service by completing an online customer service survey. To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

¹ We note that even if we concluded that claimant’s probable receipt of decision # 121927 on or around August 11, 2017 was the date the circumstances that had prevented a timely filing ceased to exist, seven days from that date would be August 18, 2017, so her September 1st filing would still not have occurred within the “reasonable time” period required under ORS 657.875.