

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1306**

*Affirmed*  
*Request to Reopen Denied*

**PROCEDURAL HISTORY:** On March 23, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work with good cause (decision # 171247). The employer filed a timely request for hearing. On June 28, 2017, the Office of Administrative Hearings (OAH) mailed the parties notice of a hearing scheduled for July 12, 2017, at 2:30 p.m. On July 12, 2017, ALJ Buckley conducted a hearing at which claimant failed to appear and on July 17, 2017, issued Hearing Decision 17-UI-88156, concluding claimant voluntarily left work without good cause. On August 7, 2017, Hearing Decision 17-UI-88156 became final without claimant having requested that the hearing be reopened. On October 23, 2017, claimant filed a late request to reopen the hearing. On November 1, 2017, ALJ Kangas issued Hearing Decision 17-UI-95898, denying claimant's request for reopening. On November 10, 2017, claimant filed an application for review of Hearing Decision 17-UI-95898 with the Employment Appeals Board (EAB).

We considered the record and claimant's written argument.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant's late request to reopen must be denied.

ORS 657.270(5)(a)(B) provides that parties have 20 days after the issuance of the written hearing decision to file a request to reopen. ORS 657.875 allows the 20-day time period to be extended "a reasonable time" upon a showing of "good cause." OAR 471-040-0041(1)(a) (February 10, 2012) provides that claimant must show "good cause for failing to request reopening within the time allowed." OAR 471-040-0041(2) defines "good cause" as when "an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control." OAR 471-040-0041(3) defines "a reasonable time" as "seven days after the circumstances that prevented a timely filing ceased to exist."

In her request to reopen, claimant explained that she failed to appear at the July 12, 2017 hearing because she did not receive notice of the hearing until September 5, 2017, when her mail was forwarded to a new address in a different county. DR Exhibit 5. Presumably, claimant also received Hearing

Decision 17-UI-95898 at that time. Thus, as of September 5, 2017, claimant knew the hearing had been scheduled, knew she had missed it, and knew that she needed to file a request to reopen in order to appeal the hearing decision. The seven day “reasonable time” period allowed under the rule would therefore extend only to September 12, 2017, seven days after claimant received her mail. Claimant’s written argument to EAB shows claimant did not file her request to reopen until October 23 because she received a billing for an overpayment in October. That claimant was unaware of an overpayment is not an excusable mistake that would justify extension of the appeal period from September 5 to October 23, 2017. Therefore, claimant’s request to reopen must be denied.

**DECISION:** Hearing Decision 17-UI-95898 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](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.

**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.