

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1342

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On September 19, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 84250). On October 10, 2017, decision # 84250 became final without claimant having filed a request for hearing. On October 14, 2017, claimant filed a late request for hearing. On November 8, 2017, ALJ Murdock conducted a hearing, and on November 13, 2017 issued Hearing Decision 17-UI-96705, dismissing claimant's request for hearing as untimely without good cause. On November 18, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered the entire hearing record and claimant's written argument when reaching this decision.

FINDINGS OF FACT: (1) Claimant received decision # 84250 and a form for requesting a hearing on that decision in the mail in time to file a request by the Tuesday, October 10, 2017 deadline.

(2) On October 10, 2017, claimant completed, signed and dated the request for hearing form. However, she did not place it in her mailbox for delivery by the United States Postal Service (USPS) until Friday, October 13 or Saturday, October 14, 2017. The postmarked date affixed by the USPS was October 14, 2017.

CONCLUSIONS AND REASONS: Claimant's request for hearing on decision # 84250 is dismissed as untimely without good cause.

ORS 657.269 provides that the Department's decisions become final unless a party files a request for hearing within 20 days after the date it is mailed. When filed by mail, the date of filing shall be the postmarked date affixed by the USPS. OAR 471-040-0005(4)(b) (July 14, 2017). 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 (February 10, 2012) provides that "good cause" includes factors beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors ceased to exist.

To be timely, claimant's request for hearing on decision # 84250 had to be filed no later than Tuesday, October 10, 2017. It was filed late on Saturday, October 14, 2017, the postmarked date affixed by the USPS. At hearing, claimant testified that she thought she "got the [request for hearing] in on time." Audio Record at 7:00. However, claimant admitted that she could not "totally remember," and that if it was postmarked October 14, 2017, then that is likely when she "sent it." Audio Record at 7:30, 8:25. We find it unlikely that the USPS did not pick up and/or postmark claimant's request until four days after she placed it her mailbox for delivery. We find it more likely that claimant placed the request for hearing in her mailbox on October 13, 2017, too late for it to be picked up for delivery that day, or on October 14, 2017.

Claimant did not assert or show that it was beyond her reasonable control to place the request for hearing in her mailbox for delivery in time for it to be postmarked on or before October 10, 2017 or to timely file the request for hearing by fax or delivery. Instead, claimant's failure to do so appears to have been a mistake. However, 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 to follow direction despite substantial efforts to comply. Claimant did not establish good cause for the late request for hearing, and her request must therefore be dismissed.

DECISION: Hearing Decision 17-UI-96705 is affirmed.

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

DATE of Service: November 29, 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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