

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1457

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY AND FINDINGS OF FACT: On October 20, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant, not for misconduct (decision # 100602). On November 8, 2017, the Department served notice of an administrative decision denying the employer's request for relief of charges to its account for benefits payable to claimant (charge relief decision). On November 9, 2017, decision # 100602 became final without the employer having filed a request for hearing on that decision. On November 28, 2017, the employer filed a timely request for hearing on the charge relief decision, which the Office of Administrative Hearings (OAH) also construed as a late request for hearing on decision # 100602. On December 5, 2017, ALJ Kangas issued Hearing Decision 17-UI-98209, dismissing the employer's late request for hearing on decision # 100602, subject to the employer's right to renew its request by responding to an appellant questionnaire by December 19, 2017. On December 14, 2017, the employer filed a timely response to the appellant questionnaire and a timely application for review with the Employment Appeals Board (EAB). On December 14, 2017, ALJ Kangas considered the employer's response to the appellant questionnaire and issued Hearing Decision 17-UI-99038, re-dismissing the employer's request for hearing as untimely without a showing of good cause.

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

CONCLUSIONS AND REASONS: We agree with the ALJ the employer's late request for hearing on decision # 100602 must be dismissed.

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. 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.

In written argument, as in its response to the appellant questionnaire, the employer asserted that it filed a timely request for hearing on the administrative decision at issue in this case because the decision was mailed on November 8, 2017, and the employer filed its request on November 28, 2017. However, the administrative decision at issue in this case is decision # 100602, which concluded that the employer discharged claimant, not for misconduct. That decision was mailed on October 20, 2017. The administrative decision mailed on November 8, 2017 is the charge relief decision, which denied the employer's request for relief of charges to its account for benefits payable to claimant. On November 28, 2017, the employer filed a timely request for hearing on the charge relief decision, which OAH also construed as a request for hearing on decision # 100602. However, because decision # 100602 was mailed on October 20, 2017, the employer's November 28, 2017 request for hearing on that decision was late.

The employer provided no explanation for its failure to file a timely request for hearing on decision # 100602, and therefore failed to establish good cause to extend the filing deadline. We therefore agree with the ALJ that the employer's late request for hearing on decision # 100602 must be dismissed.

DECISION: Hearing Decision 17-UI-99038 is affirmed.

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

DATE of Service: December 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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