

EMPLOYMENT APPEALS BOARD DECISION
2017-EAB-1486

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On October 17, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not actively seek work from August 27, 2017 to September 16, 2017 (decision # 75142). On November 6, 2017, decision # 75142 became final without claimant having filed a timely request for hearing. On November 19, 2017, claimant filed a late request for hearing. On December 4, 2017, ALJ Kangas issued Hearing Decision 17-UI-98142, dismissing claimant's request for hearing subject to his right to renew the request by responding to an appellant questionnaire within 14 days of the date the decision was mailed, which was December 18, 2017. On December 22, 2017, claimant responded to the questionnaire and filed an application for review with the Employment Appeals Board (EAB). On December 28, 2017, ALJ Kangas mailed claimant a letter stating that his response to the appellant question was late and, therefore, would not be considered by the ALJ.

With his application for review, claimant submitted a partially completed appellant questionnaire. Under OAR 471-041-0090(1) (October 29, 2016), information offered, but not received into the hearing record, may be received into evidence as necessary to complete the record. The information included in the questionnaire is relevant and material to EAB's determination, necessary to complete the record, and, therefore, admitted into the record as EAB Exhibit 1. Any party that 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 information will remain in the record at EAB Exhibit 1.

FINDING OF FACT: When asked what prompted him to file his request for hearing on the date he filed it, claimant responded, "was affiliated with Local # 16 Sheet Metal and was not obligated to seek work outside union, call for receipt copy to verify (dispatch list fee) request must come from E.D. per Lisa in office." See EAB Exhibit 1. Claimant did not respond when asked if he thought he filed his request for hearing on time, why he did not file his hearing request by the deadline stated in the administrative decision, if there was anything he could have done to meet the deadline, or why he thought he had "good cause" for filing his request for hearing late. *Id.*

CONCLUSIONS AND REASONS: We agree with the ALJ that claimant’s late request for hearing should be dismissed.

ORS 657.269 provides that parties have 20 days to request a hearing on an administrative decision. 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 states, in pertinent part, that “good cause” is an excusable mistake or factors beyond an applicant’s reasonable control, and a “reasonable time” is seven days after the circumstances that prevented a timely filing ceased to exist.

In this case, claimant explained in his appellant questionnaire why he thought the Department’s decision in this case was wrong, but did not show or attempt to establish that he filed his request for hearing on that decision within the 20-day time period allowed, or that he had good cause to file a late request for hearing and filed his late request for hearing within a reasonable time. In the absence of such showings, claimant’s late request for hearing must be dismissed. Decision # 75142 therefore remains undisturbed.

DECISION: Hearing Decision 17-UI-98142 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.

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.