

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0046**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On September 29, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant's discharge was for misconduct (decision # 143901). On October 11, 2017, the Department served notice of an administrative decision reversing decision # 143901 and concluding that claimant's discharge was not for misconduct and benefits were allowed (decision # 135042). On October 31, 2017, decision # 135042 became final without the employer having filed a timely request for hearing. On November 16, 2017, the employer filed a late request for hearing. On December 22, 2017, ALJ Shoemake conducted a hearing, and on December 29, 2017 issued Hearing Decision 17-UI-99920, dismissing the employer's late request for hearing. On January 11, 2017, the employer filed an application for review of Hearing Decision 17-UI-99920 with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Likely in early October, the employer received notice of decision # 143901 and understood claimant had been denied unemployment insurance benefits.

(2) In mid-October 2017, the employer received an envelope from the Department that contained a bundle of paper. The bundle included both decision # 135042, which allowed claimant benefits, and decision # 152140, which denied claimant benefits.

(3) The employer saw decision # 152140, the decision that denied claimant benefits. The employer flipped through the papers and saw a lot of other documents, including documents written in other languages. The employer assumed that the bundle of papers were only related to decision # 152140 and did not read the other documents or notice that decision # 135042, which allowed claimant benefits, was included in the bundle.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that the employer's late request for hearing should be dismissed.

ORS 657.269 provides that administrative decisions become final unless a party requests a hearing within 20 days after it is issued. ORS 657.875 allows the 20-day filing period to be extended a

reasonable time upon a showing of good cause. OAR 471-040-0010(1) (February 10, 2012) defines “good cause” to include an excusable mistake or factors beyond the applicant’s reasonable control, but provides that good cause does not include not understanding the implications of a decision or notice when it is received.

The employer did not establish good cause to extend the filing period in this case. The employer received notice of decision # 135042 when it was mailed to the employer; its failure to read or understand the implications of the document it received was not good cause to extend the filing deadline. Under the circumstances described by the employer, reading the documents the Department mailed was within the employer’s reasonable control. While the employer’s failure to read the documents was likely due to a mistake on the employer’s part, the mistake was not excusable because it did not, for example, raise a due process issue, and was not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Because the employer did not establish good cause to extend the filing period in this matter, the employer’s late request for hearing must be dismissed. Decision # 135042 remains undisturbed.

**DECISION:** Hearing Decision 17-UI-99920 is affirmed.

J. S. Cromwell and D. P. Hettle;  
S. Alba, not participating.

**DATE of Service:** January 25, 2018

**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.

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