

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0128

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On November 3, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 92045). On November 27, 2017, decision # 92045 became final without claimant having filed a request for hearing. On November 29, 2017, claimant filed a late request for hearing. On December 4, 2017, ALJ Kangas issued Hearing Decision 17-UI-98175, dismissing claimant's late request for hearing subject to her right to renew the request by filing a response to an appellant questionnaire within 14 days. On December 18, 2017, claimant filed a timely response to the appellant questionnaire. The Office of Administrative Hearings (OAH) reviewed claimant's response, on December 26, 2017 cancelled and vacated Hearing Decision 17-UI-98175, and on January 8, 2018 scheduled a hearing for January 25, 2018. On January 25, 2018, ALJ S. Lee conducted a hearing, and on February 1, 2018 issued Hearing Decision 18-UI-102196, re-dismissing claimant's request for hearing as untimely without good cause. On February 7, 2018, claimant filed a timely application for review of Hearing Decision 18-UI-102196 with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) The Department mailed notice of decision # 92045 to claimant's correct address in Gresham, Oregon. Claimant did not personally receive notice of the decision until Friday, November 24, 2017, at least in part because she did not check mail delivered to that address for a period of one week.

(2) On November 24, 2017, claimant read the notice of decision # 92045, which stated that the decision denied benefits, that claimant had the right to appeal the decision if she did not believe it was correct, that she could return the attached form or contact the Department to request a hearing by telephone, and that her request for appeal had to be received no later than November 27, 2017. Claimant disagreed with the decision and understood she was required to request a hearing by November 27, 2017. However, claimant did not fully understand the decision's implications, and did not decide to request a hearing until it was too late for her to do so by November 27, 2017.

CONCLUSIONS AND REASONS: Claimant's late request for hearing on decision # 92045 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. 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" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an applicant's reasonable control, but does not include failing to understand the implications of a decision or notice when it is received. *Id.*

In the present case, claimant filed her request for hearing on decision # 92045 two days late, in part, because she did not fully understand the decision's implications, which, under OAR 471-040-0010, does not constitute good cause. Claimant also filed her request for hearing late, in part, because she did not check her mail for one week, and did not decide to request a hearing until it was too late for her to do so by the filing deadline, which were factors within her reasonable control. Nor were those mistakes excusable, as they did not, for example, raise a due process issue, and were not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Claimant's late request for hearing on decision # 92045 therefore is dismissed as untimely without good cause. Decision # 92045 remains undisturbed.

DECISION: Hearing Decision 18-UI-102196 is affirmed.

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

DATE of Service: February 21, 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. 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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