

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0157

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On September 22, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 133408). On October 12, 2017, decision # 133408 became final without claimant having filed a timely request for hearing. On January 16, 2018, claimant filed a late request for hearing. On January 18, 2018, ALJ Kangas reviewed claimant's request and issued Hearing Decision 18-UI-101211, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by February 1, 2018. On February 4 and February 5, 2018, claimant filed a late response to the appellant questionnaire with the Office of Administrative Hearings (OAH) and an application for review with the Employment Appeals Board (EAB). On February 14, 2018, OAH mailed a letter declining to review claimant's appellant questionnaire.

With his application for review claimant submitted copies of a completed appellant questionnaire and a series of text messages about his work separation. EAB may consider new information that is not part of the record if the information is relevant and material to EAB's determination and the party offering the information demonstrates that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. OAR 471-040-0090 (October 29, 2006). The only issue EAB has jurisdiction to review at this time is the late request for hearing. The text messages are, therefore, not relevant and material to EAB's determination and were not considered. The completed appellant questionnaire is relevant and material to EAB's determination, and OAH's decision not to consider the information or admit it into evidence appears to have prevented the information from being placed into evidence. We therefore marked claimant's appellant questionnaire as EAB Exhibit 1 and admitted it into evidence. 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, EAB Exhibit 1 will remain in the record.

FINDINGS OF FACT: Claimant did not file a timely request for hearing in this case because he misplaced his paperwork. He filed a late request for hearing some point after he found his paperwork.

CONCLUSIONS AND REASONS: Claimant's late request for hearing should be dismissed.

ORS 657.269 provides that parties have 20 days to request a hearing on the Department's administrative decisions. 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(1) defines "good cause" as "an excusable mistake" or "factors beyond an applicant's reasonable control." OAR 471-040-0010(3) defines a "reasonable time" as "seven days after the circumstances that prevented a timely filing ceased to exist."

Claimant misplaced his paperwork, but because it is generally considered within a parties ability to keep track of legal documents misplacing paperwork is not a factor beyond claimant's reasonable control. Although misplacing the paperwork was likely the result of a mistake on claimant's part, it was not an "excusable mistake" within the meaning of the administrative rules 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. Additionally, claimant did not establish that he met the "reasonable time" requirement because he did not explain what date he discovered his misplaced paperwork, or establish that he filed his late request for hearing within seven days of that date.

Claimant stated in his questionnaire that he believed he had good cause for his late request for hearing based upon his disagreement with the administrative decision, "the fact that I was lawfully unemployed and have text message documentation from foreman" and "having legal documentation of legal unemployment from employer." Claimant's disagreement with the administrative decision and possession of documents pertaining to his work separation do not establish good cause to extend the filing period, however. A good cause determination depends only on claimant showing that the reasons he missed the filing deadline amounted to good cause and that he filed the late request within a reasonable time. Because claimant in this case has not made the necessary showings, we do not have jurisdiction to address the issue of whether or not he should be disqualified from receiving unemployment insurance benefits because of his work separation.

DECISION: Hearing Decision 18-UI-101211 is affirmed.

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

DATE of Service: February 15, 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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