

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0167**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On April 18, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 162916). On May 8, 2017, decision # 162916 became final without claimant having filed a timely request for hearing. On December 22, 2017, claimant filed a late request for hearing by telephone. On December 28, 2017, ALJ Kangas reviewed claimant's request and issued Hearing Decision 17-UI-99877, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by January 11, 2018. On January 10, 2018, the Office of Administrative Hearings (OAH) received claimant's response. On January 12, 2018, OAH mailed a letter stating that Hearing Decision 17-UI-99877 was cancelled. On January 23, 2018, OAH mailed notice of a hearing scheduled for February 6, 2018. On February 6, 2018, ALJ Meerdink conducted a hearing, and on February 8, 2018 issued Hearing Decision 18-UI-102806, dismissing claimant's late request for hearing. On February 16, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

With his application for review, claimant submitted a copy of a fax transmission verification report dated May 11, 2017 establishing that on May 11, 2017 claimant successfully faxed two pages to 1-503-947-1531. We take notice that 1-503-947-1531 is OAH's primary fax number.<sup>1</sup> The May 11, 2017 fax verification report contains new information because, although it was testified to during the hearing, it was not placed into evidence. EAB may consider a party's new information if the information is necessary to complete the record, or if relevant and material to EAB's determination and factors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing. OAR 471-041-0090 (October 29, 2006). In this case, although claimant testified that he faxed OAH on May 11<sup>th</sup>, and therefore attempted to place relevant and material

<sup>1</sup> We take notice of this fact, which is contained in Employment Department records, generally cognizable and within EAB's specialized knowledge. 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. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the noticed fact will remain in the record.

information about his request for hearing into the record, the ALJ disregarded claimant's testimony as lacking probative value, found as fact that he did not fax OAH on May 11, 2017 (Hearing Decision 18-UI-102806 at 2), and concluded that claimant's May 11, 2017 fax was sent to a different, incorrect, fax number (Hearing Decision 18-UI-102806 at 3). The ALJ's rejection of claimant's testimony about the May 11, 2017 fax to OAH was a factor or circumstance beyond claimant's control, and we therefore admit the May 11, 2017 fax transmission verification report as corroborating evidence that is necessary to complete the record in this matter. 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 fax transmission verification report will remain in the record at EAB Exhibit 1.

**FINDINGS OF FACT:** (1) Claimant received notice of decision # 162916 shortly after it was mailed to him on April 18, 2017. Claimant read the bold font caption stating that benefits had been denied. He did not look at the reasons benefits were denied. Claimant decided to stop claiming benefits and did not contact the Department about decision # 162916 because his claim had been denied and he was in a financial position not to need to pursue benefits at that point.

(2) On May 10, 2017, claimant reopened his claim for unemployment insurance benefits. On May 11, 2017 at 5:12 p.m., claimant faxed two pages to OAH's primary fax number. *See* EAB Exhibit 1. On May 11, 2017 at 5:14 p.m., claimant faxed two pages to an insurance company. The fax transmission verification reports for both faxes indicated that the faxes were successfully transmitted.

(3) After May 11, 2017, claimant did not continue claiming benefits. Claimant received something indicating that an office had moved and erroneously believed that OAH had moved its offices. He believed that the notice meant that OAH was going to be delayed processing his fax. Between May and December 2017, claimant did not receive any communication from OAH, and did not contact the Department or OAH to follow up on his May 11, 2017 fax.

(4) On December 19, 2017, claimant visited one of the Department's WorkSource Oregon offices. During that visit, an employee suggested claimant follow up on his unemployment insurance claim. Effective December 17, 2017, claimant again reopened his claim for unemployment insurance benefits. On December 20, 2017, claimant called the Department to ask about his hearing schedule and was referred to OAH. On December 22, 2017, claimant called the Department and filed a request for hearing on decision # 162916 by telephone.

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

ORS 657.269 allows parties 20 days to file a request for hearing on a Department decision. ORS 657.875 allows that 20-day period to be extended "a reasonable time" upon a showing of "good cause." "Good cause" is defined to include "factors beyond the applicant's reasonable control prevented a timely filing" or an "excusable mistake"; "a reasonable time" is seven days after the circumstances that prevented timely filing ceased to exist. *See* OAR 471-040-0040 (February 10, 2012).

Claimant alleged in his appellant questionnaire and at the hearing that he initially filed a timely request for hearing in this matter on April 26, 2017. *See e.g.* Exhibit 3. However, although claimant submitted

documentation such as fax transmission verification report supporting his assertion that he faxed OAH on May 11, 2017, claimant submitted no such documentation that he faxed OAH on April 26, 2017. Nor did he establish the basis of his belief that he had done so on that date, whether it was an independent recollection, documentation, or some other reason. Additionally, when asked by the ALJ, claimant ultimately admitted that after receiving decision # 162916 in April 2017, he saw in bold font that his benefits were denied, did not read the decision in detail at that point, thought the denial was unfair, but felt he was financially “okay” at that point and “went on about his business” and decided to stop claiming benefits until employees at the WorkSource office suggested eight months later that he might have unemployment funds available to him. Audio recording at ~ 33:40-36:40. Claimant testified that it was not until that point that he re-read the decision, re-evaluated it, and thought he might have a chance. *Id.* Given claimant’s description of his thought processes with respect to the decision after receiving it in April 2017, and the corresponding lack of documentation or basis for his belief that he requested a hearing in April 2017, claimant did not establish it was more likely than not that he filed a timely request for hearing on decision # 162916.

The record, as supplemented by EAB Exhibit 1, establishes that claimant successfully faxed two pages to OAH on May 11, 2017, three days after the deadline for a timely filing ceased to exist. The record fails to show what documents claimant faxed to OAH on that date; however, even assuming that his fax contained a request for hearing, the record fails to show that claimant had “good cause” to extend the filing period three days to May 11<sup>th</sup>. Claimant knew prior to the May 8<sup>th</sup> filing deadline that he had been denied benefits and chose not to pursue the matter at that time, not due to a mistake or circumstances beyond his control, but because he did not want to do anything at that time in response to the denial of benefits. Claimant’s May 11<sup>th</sup> fax closely followed his May 10<sup>th</sup> claim reopening, suggesting that it was likely claimant chose to request a hearing in response to reopening his claim and, likely, learning that benefits were not payable to him because of decision # 162916. To any extent claimant waited until May 11<sup>th</sup> to file his request for hearing because he did not understand the full implications of decision # 162916 until he reopened his claim, OAR 471-040-0010(1)(b)(B) provides that “good cause” for a late request for hearing does not include not understanding the implications of a decision or notice when it was received. Although waiting until May 11<sup>th</sup> to request a hearing 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.

Likewise, to any extent the record supports a finding that claimant waited until December 22, 2017 to file a late request for hearing in this matter, he did not show good cause to extend the filing period to December 22<sup>nd</sup>, either. Claimant’s failure to understand the implications of decision # 162916 until he met with WorkSource Oregon employees in December 2017 is excluded from the definition of “good cause” under OAR 471-040-0010(1)(b)(B), and, while it was likely a mistake for claimant to miss the original May 8<sup>th</sup> filing deadline, the mistake was not “excusable” for the same reasons cited above. For those reasons, claimant did not establish good cause to file a late request for hearing in this case. His late request for hearing must, therefore, be dismissed, and decision # 162916 must remain undisturbed.

**DECISION:** Hearing Decision 18-UI-102806 is affirmed.

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

**DATE of Service: March 8, 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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