

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0256

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On January 10, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was fired for misconduct connected with work (decision # 92009). On January 30, 2018, decision # 92009 became final without claimant having filed a timely request for hearing. On February 2, 2018, claimant filed a late request for hearing. On February 8, 2018, ALJ Kangas issued Hearing Decision 18-UI-102829, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by February 22, 2018. On February 13, 2018, claimant responded to the questionnaire. On February 21, 2018, ALJ Kangas issued Hearing Decision 18-UI-103645, re-dismissing claimant's late request for hearing. On March 8, 2018, claimant filed an application for review of Hearing Decision 18-UI-103645 with the Employment Appeals Board (EAB).

Claimant's argument contained information about his mailbox key that was not part of the hearing record, and failed to show that factors or circumstances beyond his reasonable control prevented him from offering the information with his response to the appellant questionnaire. Under ORS 657.275(2) and OAR 471-041-0090 (October 29, 2006), we considered only information received into evidence at the hearing when reaching this decision. Even if we had considered the new information, though, the outcome of the decision would remain the same, as claimant's inability to access his mailbox between January 8th and January 17th did not prevent him from filing a timely request for hearing by January 30th because still had 13 days after getting a new mailbox key in which to access his mailbox, receive decision # 92009, and file a timely request for hearing.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

DECISION: Hearing Decision 18-UI-103645 is affirmed.

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

DATE of Service: March 13, 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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