

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0404

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On June 1, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 72908). On June 21, 2017, decision # 72908 became final without claimant having filed a timely request for hearing. On March 26, 2018, claimant filed a late request for hearing. On March 29, 2018, ALJ Kangas reviewed claimant's request and issued Order No. 18-UI-106211, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by April 12, 2018. Claimant timely responded to the questionnaire. On April 18, 2018, ALJ Kangas reviewed the questionnaire and issued Order No. 18-UI-107657, re-dismissing claimant's request. On April 23, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) On approximately June 1, 2017, claimant received notice of decision # 72908. Claimant understood the deadline to file a timely request for hearing was June 21, 2017. Claimant was scheduled to begin a period of incarceration on June 24, 2017, and knew that he could not complete his appeal before he became incarcerated. He thought there was "no way I could have went forward with the appeal due to going to jail."

(2) On March 22, 2018, claimant was released from jail and was ready to deal with his unemployment case. Six days later, claimant filed a late request for hearing on decision # 72908.

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

ORS 657.269 provides that individuals have 20 days after the date an administrative decision was mailed to file a timely request for hearing. ORS 657.875 provides that the 20-day deadline may be extended "a reasonable time" upon a showing of "good cause." "A reasonable time" "is seven days after the circumstances that prevented a timely filing ceased to exist." OAR 471-040-0010(3). "Good cause" means "an excusable mistake" or "factors beyond an applicant's reasonable control." OAR 471-040-0010(1).

The circumstance that prevented claimant from filing a timely request for hearing was his incarceration. His incarceration ended on March 22, 2018, and claimant filed a late request for hearing six days later. He therefore filed within the seven-day “reasonable time” period.

In order to extend the filing deadline, however, claimant must also show “good cause” for the late filing. Claimant thought his incarceration would prevent him from pursuing his unemployment insurance appeal case, and therefore chose not to file a timely request for hearing even though he has not explained any circumstance that would have prevented him from doing so prior to becoming incarcerated. Nor did claimant contact the Department or Office of Administrative Hearings (OAH) to ask if he should wait until his release from jail to file a request for hearing on decision # 72908. It does not appear that he was prevented by a factor beyond his reasonable control from either filing a timely request for hearing or contacting the Department or OAH. Although it was likely a mistake for claimant not to do either of those things, the mistake was not “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.

Although claimant filed his late request for hearing in this case within a reasonable time, he did not establish good cause to extend the filing period, and his late request for hearing must be dismissed. Decision # 72908 therefore remains undisturbed.

DECISION: Order No. 18-UI-107657 is affirmed.

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

DATE of Service: May 23, 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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