

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0486**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On February 8, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was overpaid, and liable to repay, \$3,624.00 to the Department (decision # 141511). Decision # 141511 became final on February 28, 2018 without claimant having filed a timely request for hearing.<sup>1</sup> On April 17, 2018, claimant filed a late request for hearing on decision # 141511. On April 23, 2018, ALJ Kangas issued Order No. 18-UI-107926, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by May 7, 2018. On May 9, 2018, claimant filed a late response to the appellant questionnaire and an application for review with the Employment Appeals Board (EAB). On May 10, 2018, ALJ Kangas mailed a letter stating that claimant's questionnaire response was late and would not be considered.

With his application for review, claimant submitted a questionnaire response, which was new information that was not part of the hearing record. 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 information about claimant's late request for hearing was relevant and material to the case, and claimant was prevented from offering the information before because the ALJ refused to consider it. EAB therefore admitted the new information into evidence as EAB Exhibit 1 and considered it when reaching this decision.<sup>2</sup>

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<sup>1</sup> Claimant's April 17, 2018 request also appeared to include a late request for hearing on another Department decision, served December 4, 2017, denying claimant benefits for failing to report work and earnings when claiming the week of November 5, 2017 through November 11, 2017. We have referred that matter to the Office of Administrative Hearings (OAH) for review; if claimant has further questions about that matter he should address them directly to OAH.

<sup>2</sup> 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 exhibit will remain in the record.

**FINDINGS OF FACT:** (1) The Department mailed notice of decision # 141511 to claimant at his Madras, Oregon address of record on February 8, 2018. On April 4, 2018, the Department mailed an “Unemployment Insurance Overpayment Billing Statement” to claimant at the same address. Claimant received the billing statement.

(2) On April 16, 2018, claimant wrote a letter titled “Request an Appeal Hearing.” On April 17, 2018, claimant faxed that letter to the Office of Administrative Hearings (OAH). Claimant included with the fax a copy of the first page of decision # 141511.

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

ORS 657.269 provides that parties have 20 days from the date the Department mails notice of a decision to request a hearing, or the decision will become final and benefits will be paid or denied accordingly. ORS 657.875 provides, however, that the 20-day period may be extended “a reasonable time” upon a showing of “good cause.” OAR 471-040-0010 defines “a reasonable time” as seven days after the circumstances that prevented a timely filing ceased to exist, and “good cause” as “an excusable mistake” or “factors beyond an applicant’s reasonable control.”

As a preliminary matter, claimant’s questionnaire response stated that claimant did not file a timely request for hearing in this matter because he “didn’t receive it in the mail,” and that he did not know about the case until he “was being billed for the benefits I received.” However, the questionnaire response also stated that claimant received the decision at issue on April 27, 2018 and faxed his request for hearing to OAH on May 9, 2018. Both of those dates occur *after* the date of claimant’s late request for hearing in this matter, however, and therefore are not the dates upon which claimant received decision # 141511 or requested a hearing on that decision. The totality of evidence in the record suggests that those dates most likely correspond to the date claimant received notice of Order No. 18-UI-107926 and the date claimant faxed his questionnaire response to OAH. Therefore, it is more likely than not that the information claimant provided in his questionnaire response about his receipt of a decision and faxing his request also corresponded to claimant’s receipt and completion of the appellant questionnaire, and not the matter at issue in this case, which is why claimant did not file a timely request for hearing on decision # 141511 in February 2018.

The late request for hearing claimant filed on April 17, 2018 included a copy of decision # 141511, suggesting that he received a copy of that administrative decision. On this record, we have no reason to conclude that claimant did not receive it shortly after it was mailed in February 2018. Likewise, on this record, we have no explanation for why claimant did not file a request for hearing on that decision on or before the February 28, 2018 deadline. Claimant therefore did not show that he had “good cause” to extend the filing period in this matter because of factors beyond his reasonable control or an excusable mistake.

Even if we assumed that claimant might not have received the decision in February 2018, and therefore could not have filed a request for hearing on time, claimant also did not establish that his April 17<sup>th</sup> filing satisfied the “reasonable time” requirement for late requests for hearing. Claimant included with his April 17<sup>th</sup> request for hearing a copy of a billing statement sent to him on April 4, 2018. The billing statement referred to the \$3,624 overpayment amount at issue in decision # 141511. Therefore, to any

extent claimant might not have filed a timely request for hearing on the overpayment because he did not know about it, that circumstance ended when claimant received the April 4<sup>th</sup> billing statement. Documents sent through U.S. Postal Service as first class mail generally take between 1 and 3 days to arrive at their destination, and documents sent through the mail are presumed to have been received subject to evidence to the contrary.<sup>3</sup> We therefore infer that a document mailed to claimant on April 4<sup>th</sup> was likely delivered to him between April 5<sup>th</sup> and April 7<sup>th</sup>. Claimant waited until April 17<sup>th</sup>, at least 10 days later, to file his late request for hearing. 10 days exceeds the 7-day reasonable time period established in the applicable administrative rules. Claimant therefore did not file his late request for hearing within “a reasonable time” after the circumstances that might have prevented a timely filing ceased to exist.

Because claimant did not file his late request for hearing within “a reasonable time” and did not establish “good cause” to extend the filing period, his late request for hearing must be dismissed. Decision # 141511 therefore remains undisturbed.

**DECISION:** Order No. 18-UI-107926 is affirmed.

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

**DATE of Service:** May 11, 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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<sup>3</sup> *See* <https://www.usps.com/ship/welcome.htm> (domestic first-class mail ships in an estimated 1-3 days); *see also* ORS 40.135(q) (setting forth the legal presumption a letter duly directed and mailed was received in the regular course of the mail).