

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0524

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On November 9, 2010, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$11,979 overpayment, \$1,796.85 monetary penalty and 52 penalty weeks. On November 29, 2010, that decision became final without claimant having filed a timely request for hearing. On March 5, 2018, claimant filed a late request for hearing. On March 13, 2018, ALJ Kangas reviewed claimant's request and issued Order No. 18-UI-105041, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by March 27, 2018. On April 18, 2018, claimant submitted to the Office of Administrative Hearings both a late response to the questionnaire and an application for review with the Employment Appeals Board (EAB). On May 1, 2018, ALJ Kangas notified claimant that his questionnaire response was late and would not be considered. This matter is before EAB on claimant's April 18, 2018 application for review.

Claimant's questionnaire response is admitted into evidence as EAB Exhibit 1, because the ALJ's refusal to consider claimant's late questionnaire amounted to a circumstance beyond his control. *See* OAR 471-041-0090. Any party that objects to our doing so must submit such objection in writing, within 10 days of the date of this decision, or the exhibit will remain in the record.

EAB considered claimant's argument when reaching this decision.

FINDINGS OF FACT: Claimant filed a late request for hearing for unknown reasons.

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

ORS 657.269 provides that parties have 20 days from the date an administrative decision is mailed to request a hearing. ORS 657.875 provides that the deadline may be extended "a reasonable time" upon a showing of "good cause." OAR 471-040-0010 provides that "a reasonable time" is seven days after the circumstances that prevented a timely filing ceased to exist, and "good cause" means a factor beyond the applicant's reasonable control or an excusable mistake.

In a case where claimant has filed a late request for hearing on an administrative decision, claimant has the burden to establish that, more likely than not, he had “good cause” to extend the filing deadline “a reasonable time.” In this case, claimant has not provided reasons why he could not have filed a timely request for hearing, except to state that he was sure he did, and did not establish that he filed his late request within seven days of whenever the circumstances that had prevented him from filing a timely request for hearing ceased to exist. In the absence of information from claimant about his reasons for filing when he did, claimant’s late request for hearing must be dismissed. Because claimant is not entitled to a hearing on the overpayment decision, he is not entitled to contest the amount of the overpayment.

DECISION: Order No. 18-UI-105041 is affirmed.

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

DATE of Service: May 24, 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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