

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0670

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On February 2, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was unable to work from December 31, 2017 through January 27, 2018 (decision # 131809). On February 22, 2018, decision # 131809 became final without claimant having filed a request for hearing. On March 16, 2018, claimant filed a late request for hearing. On March 26, 2018, ALJ Kangas issued Order No. 18-UI-105968, dismissing claimant's request for hearing as untimely without a showing of good cause, subject to her right to renew the request by filing a response to an appellant questionnaire by April 9, 2018. On or about June 5, 2018, claimant filed a late response to the appellant questionnaire. On June 12, 2018, ALJ Kangas issued a letter re-dismissing claimant's late request for hearing without considering claimant's late response to the appellant questionnaire. On or about June 25, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's June 5, 2018 response to the appellant questionnaire under OAR 471-041-0090(1) (October 29, 2016), under which information offered but not received into the hearing record may be received into evidence as necessary to complete the record. However, EAB did not consider the new information contained in the written argument claimant submitted with her application for review because claimant failed to establish that factors or circumstances beyond her reasonable control prevented her from offering that information into the hearing record in her response to the appellant questionnaire. *See* OAR 471-041-0090(2). Even if we had considered the new information contained in claimant's written argument, however, our decision would remain the same.

CONCLUSIONS AND REASONS: Claimant's request for hearing is dismissed as untimely without a showing of good cause.

ORS 657.269 provides that the Department's decisions become final unless a party files a request for hearing within 20 days after the date it is mailed. ORS 657.875 provides that the 20-day deadline may be extended a "reasonable time" upon a showing of "good cause." OAR 471-040-0010 (February 10, 2012) provides that "good cause" includes factors beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors ceased to exist.

Here, claimant filed her request for hearing on decision # 131809 four weeks after the filing deadline. In her response to the appellant questionnaire, claimant asserted that she does not “remember receiving an administrative decision,” is “not sure if she received an administrative decision,” and is “not sure” what prompted her to file her request for hearing when she did. However, documents sent through the U.S. Postal Service are presumed to have been received by the addressee, subject to evidence to the contrary. *See generally* OAR 137-003-0520(10) (January 31, 2012); ORS 40.135(1)(q). Claimant’s assertion that she does not remember receiving and administrative decision, and is not sure if she received one, is insufficient to overcome that presumption. Nor, based on claimant’s assertion that she is not sure what prompted her to file her request for hearing when she did, can we find that claimant filed her request for hearing within a reasonable time as defined under OAR 471-040-0010. Claimant’s late request for hearing on decision # 131809 therefore is dismissed as untimely without a showing of good cause.

DECISION: Order No. 18-UI-105968 is affirmed.

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

DATE of Service: July 16, 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.