

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0832**

*Affirmed*  
*Request to Reopen Denied*

**PROCEDURAL HISTORY:** On April 25, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not able, available, and actively seeking work from April 1, 2018 to April 21, 2018 (decision # 80638). Claimant filed a timely request for hearing. On May 10, 2018, the Office of Administrative Hearings (OAH) mailed notice of a hearing scheduled for May 24, 2018 at 2:30 p.m., at which time claimant failed to appear. On May 24, 2018, ALJ Griffin issued Order No. 18-UI-110105, dismissing claimant's request for hearing for failure to appear. On June 13, 2018, Order No. 18-UI-110105 became final without claimant having filed a timely request to reopen the May 24<sup>th</sup> hearing. On August 6, 2018, claimant filed a late request to reopen. On August 7, 2018, ALJ Kangas issued Order No. 18-UI-114493, denying claimant's late request to reopen. On August 27, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB considered claimant's written argument when reaching this decision. Because claimant's argument did not cover why claimant filed his request to reopen late, however, the argument was not material to this decision.

**FINDINGS OF FACT:** Claimant missed his May 24<sup>th</sup> hearing on decision # 80638 because he did not realize that he had two hearings on the same day. Claimant did not explain why he filed his request to reopen that hearing late.

**CONCLUSIONS AND REASONS:** Claimant's late request to reopen is denied.

ORS 657.270(5)(c)(B) provides that a party filing a request to reopen must do so within 20 days after the issuance of the written decision by the administrative law judge.

The 20-day period claimant had to request reopening after Order No. 18-UI-110105 was issued expired on June 13, 2018 without claimant having filed his request. Because claimant filed his request to reopen late, we do not have jurisdiction to decide whether or not he had good cause to reopen the hearing unless

claimant first proved that he had good cause to file the request to reopen late. Therefore, the only issue before us is whether claimant had good cause to file his request to reopen late.

ORS 657.875 provides that the 20-day filing period may be extended a reasonable time upon a showing of good cause. OAR 471-040-0041(3) defines “a reasonable time” as seven days after the circumstances that prevented a timely filing ceased to exist. OAR 471-040-0041(2) defines “good cause,” in brief part, as “an excusable mistake” or “factors beyond an applicant’s reasonable control.”

Claimant did not include any explanation in his request to reopen explaining why he filed late, as required by OAR 471-040-0041(4). Because claimant did not explain why he filed his request to reopen late, he did not prove that he had good cause for the late filing or that he filed the late request to reopen within the seven-day “reasonable time” period. Because claimant did not prove that he had good cause for the late filing and filed within a “reasonable time,” his late request to reopen is denied.

Because claimant’s late request to reopen is denied, he does not have the right to a hearing on why he missed the hearing or whether those reasons might amount to good cause for missing the hearing, nor does he have the right to a hearing on the merits of decision # 80638. That decision therefore remains undisturbed.

**DECISION:** Order No. 18-UI-114493 is affirmed.

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

**DATE of Service: August 31, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.