

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0850**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On November 8, 2012, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 94013). On November 28, 2012, decision # 94013 became final without claimant having filed a timely request for hearing. On approximately March 25, 2016 or July 10, 2018, claimant filed a late request for hearing. On July 12, 2018, ALJ Kangas issued Order No. 18-UI-113031, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by July 26, 2018. On July 25, 2018, claimant responded to the appellant questionnaire. On July 26, 2018, the Office of Administrative Hearings (OAH) mailed a letter stating that Order No. 18-UI-113031 was canceled. On July 31, 2018, OAH mailed notice of a hearing scheduled for August 14, 2018. On August 14, 2018, ALJ Amesbury conducted a hearing, and on August 16, 2018 issued Order No. 18-UI-115046, dismissing claimant's late request for hearing. On August 28, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that he provided a copy of his argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). Therefore, we did not consider the argument when reaching this decision. Even if we had considered the argument, however, the outcome of this case would remain the same for the reasons explained herein.

**FINDINGS OF FACT:** (1) Claimant did not receive notice of decision # 94013 when it was mailed to him in November 2012, likely due to a mail delivery interruption at his address.

(2) Between 2012 and 2016, claimant changed residences several times. He occasionally updated his address with the Department.

(3) Between 2012 and 2018, the Department mailed claimant approximately 30 letters and billing statements that were based upon decision # 94013. The October 28, 2015 and May 25, 2016 statements were returned to the Department by the U.S. Postal Service with a forwarding address label affixed to the envelopes. The Department took note of claimant's new address and re-sent the statements to him. The re-sent statements were not returned to the Department by the U.S. Postal Service as undeliverable.

(4) On February 9, 2016, claimant spoke with a Department employee. During the conversation, the Department employee told claimant about decision # 94013 and mailed a copy of the decision to claimant.

(5) On March 25, 2016, the Department received a letter from claimant in which claimant disputed decision # 94013 and explained why he had left his job with the employer. On June 13, 2016, claimant called the Department about his March 25, 2016 letter.

(6) On June 15, 2018, claimant called the Department to discuss the debt he had incurred based upon decision # 94013. The Department employee told claimant during that call that he could file a late request for hearing on decision # 94013. Claimant told the employee that his break was almost over and that he would call back later.

(7) On July 10, 2018, claimant called the Department again. During that call, he filed a late request for hearing on decision # 94013 by telephone.

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

ORS 657.269 provides that parties have 20 days after the date an administrative decision is issued to request a hearing. In this case, the 20-day period expired on November 28, 2012 without claimant having requested a hearing. His request for hearing was, therefore, late.

ORS 657.875 provides that the 20-day period in which parties may request a hearing may be extended "a reasonable time" upon a showing of "good cause." OAR 471-040-0010 defines "good cause" to include an excusable mistake or circumstances beyond the individual's reasonable control; "a reasonable time" is defined as seven days after the circumstances that prevented a timely filing ceased to exist.

The ALJ found as fact that claimant's late request for hearing was filed on July 10, 2018, and there is no dispute that claimant filed a late request for hearing by telephone on that date. Order No. 18-UI-115046 at 2. However, the record also shows that claimant found out about decision # 94013 on February 9, 2016 and, thereafter, sent a letter to the Department in March 2016 in which he disputed the amount he owed the Department as a result of the disqualification from benefits established in decision # 94013 and explained the circumstances under which he separated from the employment that was the subject of decision # 94013. Transcript at 31. It therefore seems likely that claimant's March 25, 2016 letter to the Department was, could, or should have been construed as, a late request for hearing on decision # 94013, filed within a few days prior to March 25, 2016.

Regardless of the date claimant filed his late request for hearing and whether claimant had "good cause" for the late request for hearing in this case, however, his late request for hearing must still be dismissed because he did not file a request for hearing within the seven-day "reasonable time" period allowed under OAR 471-040-0010. Whether claimant filed his late request for hearing within a few days prior to March 25, 2016 or on July 10, 2018, the circumstance that prevented a timely filing in this case was that claimant did not receive notice of decision # 94013 when it was mailed to him and therefore was not aware of that decision. That circumstance ceased to exist on February 9, 2016 when claimant spoke with a Department employee who told him that the decision existed then sent a copy of the decision to him.

February 9, 2016 is well over seven days prior to either March 25, 2016 or July 10, 2018. Because claimant filed after the seven-day “reasonable time” period expired, he did not file his late request for hearing within a “reasonable time” and his request must be dismissed. Claimant is therefore not entitled to a hearing on the merits of decision # 94013, which remains undisturbed.

**DECISION:** Order No. 18-UI-115046 is affirmed.

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

**DATE of Service: September 14, 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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