

EMPLOYMENT APPEALS BOARD DECISION
2018-EAB-0867

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On July 6, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant, but not for misconduct (decision # 82959). On July 26, 2018, decision # 82959 became final without the employer having filed a timely request for hearing. On August 13, 2018, the employer filed a late request for hearing. On August 15, 2018, ALJ Kangas issued Order No. 18-UI-114986, dismissing the employer's late request for hearing subject to the employer's right to renew the request by responding to an appellant questionnaire by August 29, 2018. The employer did not submit a timely response. On September 4, 2018, the employer submitted a response to the questionnaire and filed a timely application for review with the Employment Appeals Board (EAB). On September 6, 2018, the Office of Administrative Hearings issued a letter stating the employer's questionnaire response was late and would not be considered. This matter is before EAB on the employer's timely application for review of Order No. 18-UI-114986.

With its application for review the employer submitted new information that was not made 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 pertained to the employer's failure to file a timely request for hearing in this case, and is therefore relevant and material to EAB's determination. The Office of Administrative Hearings' (OAH's) refusal to consider the information when the employer submitted it to OAH was arguably a circumstance beyond the employer's reasonable control. The employer's new information, consisting of a one-paragraph letter, is therefore admitted into evidence to complete the record and marked as EAB Exhibit 1, and a copy mailed to the parties with copies of this decision. Any party that objects to our admitting EAB Exhibit 1 into evidence 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 noticed fact will remain in the record.

FINDINGS OF FACT: The employer did not file a timely request for hearing in this case because the employer found the notices he received confusing and he was not clear about “what date I had to reply by.” EAB Exhibit 1.

CONCLUSIONS AND REASONS: The employer’s late request for hearing should be dismissed.

ORS 657.269 provides that parties have 20 days from the date an administrative decision was issued to file a request for hearing. In this case, decision # 82959 was issued on July 6, 2018; the employer therefore had until July 26, 2018 to file a timely request for hearing. The employer did not file his request for hearing until August 13, 2018, making the request late.

ORS 657.875 provides that the 20-day period in which a party may file a request for hearing may be extended “a reasonable time” upon a showing of “good cause.” A “reasonable time” is seven days after the circumstances that prevented a timely filing ceased to exist. “Good cause” does not include “[n]to understanding the implications of a decision or notice when it is received.” OAR 471-040-0010(1)(b)(B).

The employer’s request for hearing in this case addressed the employer’s failure to “appear at the hearing” because “I wasn’t aware that there was a hearing and I thought I had more time to reply.” It is unclear what the employer meant by that statement, as no hearing on decision # 82959 has ever been scheduled or held. The only issue in this case is whether or not the employer had “good cause” to file a late request for a hearing on decision # 82959. The only reason the employer provided by way of explaining why he filed a late request for hearing was that the notices were confusing or unclear and he did not know “what date I had to reply by.” Under the specific terms of the applicable administrative rule, however, the employer’s failure to understand the implications of decision # 82959 as far as the filing deadline is concerned, and act accordingly, does not amount to good cause for the late request for hearing. The employer’s late request for hearing is, therefore, dismissed, and decision # 82959 must remain undisturbed.

DECISION: Order No. 18-UI-114986 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. 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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