

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0994**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On August 20, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision assessing a \$504 overpayment (decision # 143323). On September 10, 2018, decision # 143323 became final without claimant having filed a timely request for hearing. On September 18, 2018, claimant filed a late request for hearing. On September 20, 2018, ALJ Kangas issued Order No. 18-UI-116950, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by October 4, 2018. On October 10, 2018, claimant filed a timely application for review with the Employment Appeals Board (EAB) and late response to the appellant questionnaire with the Office of Administrative Hearings (OAH). On October 15, 2018, ALJ Kangas mailed a letter stating that OAH would not review claimant's questionnaire response.

With his application for review, claimant submitted a copy of his appellant questionnaire. 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 into the hearing record. OAR 471-040-0090 (October 29, 2006). The information on the questionnaire pertains to the factors that caused him to file a late request for hearing, and is therefore relevant and material. The ALJ's refusal to consider the information was arguably a circumstance beyond claimant's reasonable control that prevented the information from being admitted into the hearing record. Claimant's new information is, therefore admitted into evidence as EAB Exhibit 1. Any party that objects to our doing so 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. OAR 471-041-0090(3) (October 29, 2006). Unless such objection is received and sustained, the exhibit will remain in the record at EAB Exhibit 1.

**FINDINGS OF FACT:** On August 25, 2018, claimant received notice of decision # 143323. Claimant was very busy planning for school and work and paying his bills. He felt like he did not receive the decision in enough time, and waited until September 18, 2018 to file a late request for hearing.

**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 was mailed to file a timely request for hearing. ORS 657.875 provides that the 20-day time period may be extended, but only “a reasonable time” upon a showing of “good cause.” OAR 471-040-0010(1) defines “good cause” to include “an excusable mistake” or “factors beyond an applicant’s reasonable control.” OAR 471-040-0010(3) defines “a reasonable time” as “seven days after the circumstances that prevented a timely filing ceased to exist.”

As of the date claimant received notice of decision # 143323, he had 15 days to file a timely request for hearing and did not do so. Although there is nothing to suggest that claimant was not very busy around that time, he did not establish what it was that made him so busy that he could not have filed a timely request for hearing had he chosen to do so despite being so busy. He therefore did not show that he was prevented from filing a timely request for hearing by factors beyond his reasonable control. Although claimant’s failure to file a timely request for hearing was likely the result of a mistake on claimant’s part, it was not an “excusable mistake” within the meaning of the administrative rules because it did not, for example, raise a due process issue, and was not the result of legally defective notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply.

Even if claimant had established “good cause” for his late request for hearing, his request would still have to be denied because he did not show that his filing occurred within “a reasonable time.” In other words, claimant did not establish that his September 18, 2018 late request for hearing was filed within seven days of the date that the conditions that prevented him from a timely filing – being very busy and not having enough time – ceased to exist.

Claimant did not establish that he had good cause to extend the filing period in this case a reasonable time. His late request for hearing must, therefore, be dismissed.

**DECISION:** Order No. 18-UI-116950 is affirmed.

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

**DATE of Service:** October 18, 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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