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State of Oregon  
**Employment Appeals Board**  
875 Union St. N.E.  
Salem, OR 97311

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**EMPLOYMENT APPEALS BOARD DECISION**  
**2014-EAB-1049**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On July 30, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from June 23, 2013 through July 27, 2014. (decision # 95941). On August 19, 2013 the administrative decision became final without a request for hearing having been filed. On December 30, 2013, claimant filed a late request for hearing. On January 17, 2014, ALJ Kangas issued Hearing Decision 14-UI-08838, dismissing claimant's request for hearing as untimely, subject to claimant's "right to renew" the request by submitting a response to the "Appellant Questionnaire" attached to the hearing decision within 14 days of the date the decision was mailed. Claimant responded in writing to the Office of Administrative Hearings (OAH). On February 3, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).<sup>1</sup>

On March 17, 2014, EAB issued Appeals Board Decision 2014-EAB-0390, reversing Hearing Decision 14-UI-08838, and remanding the matter to OAH for a hearing. On May 27, 2014, ALJ Kirkwood conducted a hearing and on May 29, 2014, issued Hearing Decision 14-UI-18537, dismissing claimant's request for a hearing as untimely. On June 11, 2014, claimant filed an application for review with the EAB.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

<sup>1</sup> Because claimant submitted her application for review by mail, the filing date is the date the document was deposited in the United States mail "as evidenced by the postmark affixed to the envelope by the United States Postal service." OAR 471-041-0065(1)(b) (October 29, 2006). The postmark on the envelope in which claimant mailed her application for review is unclear, however; under these circumstances, the filing date is the one that EAB determines to be the most probable date of filing. OAR 471-041-0065(2) (October 29, 2006). Claimant's application for review contains an internal date of Saturday, February 1, 2014. It is likely that claimant mailed her application for review no more than a day or two after she prepared; consequently, we conclude that February 3, 2014 is the most probable date on which claimant deposited her application in the mail and the most probable filing date.

**DECISION:** Hearing Decision 14-UI-18537 is affirmed.

Susan Rossiter and Tony Corcoran;  
J. S. Cromwell, not participating.

**DATE of Service:** June 24, 2014

**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 website at [court.oregon.gov](http://court.oregon.gov). Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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