

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0333**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On November 19, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not available for work from February 15 through August 22, 2015 (decision # 113242). On December 9, 2015, decision # 113242 became final without a request for hearing having been filed. On February 19, 2016, claimant filed a late request for hearing with the Department, which forwarded the request to the Office of Administrative Hearings (OAH). On March 1, 2016, ALJ Kangas issued Hearing Decision 16-UI-54089, dismissing claimant's hearing request subject to his right to provide additional information for OAH's consideration by responding to an appellant questionnaire by March 15, 2016. Claimant did not respond to the appellant questionnaire. On March 21, 2016, claimant filed an application for review of Hearing Decision 16-UI-54089 with the Employment Appeals Board (EAB).

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

A Department decision becomes final unless a request for hearing is filed within 20 days after the date the decision was mailed to a party's last known address. ORS 657.269. This 20-day time limit may be extended a reasonable time upon a showing of good cause. ORS 657.875. "Good cause" exists when a party's failure to timely file results from an excusable mistake or from factors beyond the party's reasonable control. OAR 471-040-0010(1) (February 10, 2012). A "reasonable time" is defined as seven days after the circumstances that prevented a timely filing cease to exist. OAR 471-040-0010(3).

In his February 19, 2016 request for hearing, claimant stated that although he realized that the November 19, 2015 notice of decision # 113242 provided a December 9, 2015 deadline for requesting a hearing, claimant was "not in town during the month of December and the notification was not sent certified mail. I have just recently received the notice." Exhibit 2. However, claimant's statement does not explain why he did not request a hearing before leaving town in December, or shortly after returning in January. Absent such an explanation, we cannot find that claimant's failure to file a timely request for hearing resulted from an excusable mistake or factors beyond his reasonable control. Nor can we find that claimant requested a hearing within seven days after the circumstances that prevented at timely

ceased to exist. We therefore agree with the ALJ that claimant's late request for hearing should be dismissed.

**DECISION:** Hearing Decision 16-UI-54089 is affirmed.

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

**DATE of Service:** March 28, 2016

**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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