

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-0953**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On June 24, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit working for the employer without good cause (decision # 104801). Claimant filed a request for hearing. On July 28, 2016, ALJ Kangas issued Hearing Decision 16-UI-64674, dismissing claimant's request as untimely without good cause, subject to his right to renew the request by responding to an appellant questionnaire by August 11, 2016. On August 12, 2016, claimant responded to the appellant questionnaire and filed a timely application for review with the Employment Appeals Board (EAB). On August 16, 2016, the Office of Administrative Hearings (OAH) notified claimant that it would not consider her response to the appellant questionnaire because it was late, and that Hearing Decision 16-UI-64674 remained undisturbed.

**EVIDENTIARY MATTER:** For purposes of EAB's review in this matter, claimant's response to the appellant questionnaire constitutes an "[e]xhibit[] offered, but not received into evidence," which EAB may "receive[] into evidence as necessary to complete the record." OAR 471-041-0090(1) (October 29, 2006). The appellant questionnaire is therefore marked as EAB Exhibit 1, and admitted into the record.

**CONCLUSIONS AND REASONS:** Hearing Decision 16-UI-64674 is reversed, and this matter remanded to OAH for further proceedings.

Under ORS 657.269(2), claimant had 20 days to request a hearing on decision # 104801. Under ORS 657.875, the deadline for requesting a hearing may be extended a reasonable time upon a showing of good cause. OAR 471-040-0010(1) states that "'good cause' exists when an action, delay or failure to act arises from an excusable mistake or from 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."

In EAB Exhibit 1, claimant repeatedly asserted that he filed a timely request for hearing by fax, for which he had "a copy of the dated receipt of fax," that apparently did not get processed because he had been sent the wrong paperwork. Those assertions raise the issue of whether claimant filed a timely

request for hearing on decision # 104801 and, if not, whether his failure to do so arose from an excusable mistake for factors beyond his reasonable control. ORS 657.270 requires the ALJ to give the parties a reasonable opportunity for a fair hearing, and ensure that the record developed shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. *See accord Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). On remand, the ALJ must develop a record sufficient to determine whether claimant filed a timely request for hearing and, if not, whether he had good cause for failing to do so and acted within a reasonable time. If the ALJ concludes that claimant's request for hearing should be allowed, the ALJ must then develop a record on the issue of whether claimant is disqualified from receiving benefits based on his work separation from the employer.

**NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-64674 or return this matter to EAB. Only a timely application for review of the subsequent hearing decision will cause this matter to return to EAB.

**DECISION:** Hearing Decision 16-UI-64674 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: August 19, 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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