

**EMPLOYMENT APPEALS BOARD DECISION**  
**2016-EAB-1083**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On May 16, 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 # 74954). On June 16, 2016, decision # 74954 became final without claimant having filed a request for hearing. On August 26, 2016, claimant filed a late request for hearing. On August 31, 2016, ALJ Kangas issued Hearing Decision 16-UI-66607, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by September 14, 2016. On September 15, 2016, claimant filed a response to the appellant questionnaire and a timely application for review of Hearing Decision 16-UI-66607 with the Employment Appeals Board (EAB).

**EVIDENTIARY MATTER:** For purposes of EAB's review in this matter, claimant's 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-63706 is reversed, and this matter remanded to the Office of Administrative Hearings (OAH) for further proceedings.

ORS 657.269 requires that parties file requests for hearing within 20 days after the date the decisions were mailed. In order to be timely, claimant's request for hearing in this matter had to be filed no later than June 16, 2016. Claimant filed it on August 26, 2016, making it over two months late. However, ORS 657.875 allows the filing deadline to be extended a "reasonable time" upon a showing of "good cause." OAR 471-040-0010(1) (February 10, 2012) defines "good cause" as factors or circumstances beyond an individual's reasonable control or an excusable mistake. OAR 471-040-0010(3) defines "a reasonable time" as seven days after the circumstances that prevented a timely filing ceased to exist.

Claimant's response to the appellant questionnaire suggests he never received the May 16, 2016 notice of decision # 74954, first became aware of the decision during telephone call with a Department representative on August 26, 2016, and requested a hearing on the decision that same day. Claimant's

response therefore raises the issue of whether he had good cause for filing a late request for hearing on August 26, 2016. Hearing Decision 16-UI-66607 therefore is reversed, and this matter remanded for further inquiry. On remand, the ALJ should conduct an inquiry sufficient to determine whether claimant, in fact, never received the May 16, 2016 notice of decision # 74954, and, if so, whether it was due to factors or circumstances beyond his reasonable control or an excusable mistake. The ALJ also should inquire as to whether claimant otherwise became aware of decision # 74954 prior to August 19, 2016 (more than seven days before he filed his request for hearing) and, if not, whether it also was due to factors or circumstances beyond his reasonable control or an excusable mistake. If the ALJ determines that claimant had good cause for filing a late request for hearing on August 26, 2016, claimant's late request for hearing should be allowed, and the ALJ should proceed with an inquiry sufficient to determine whether claimant is disqualified from receiving benefits based on his work separation from the employer.<sup>1</sup>

**DECISION:** Hearing Decision 16-UI-66607 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: September 26, 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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<sup>1</sup> **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Hearing Decision 16-UI-66607 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.