

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0130**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On November 10, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily left work without good cause (decision # 134001). On November 30, 2016, decision # 134001 became final without claimant having requested a hearing. On January 10, 2017, claimant filed an untimely request for hearing. On January 12, 2017, ALJ Kangas issued Hearing Decision 17-UI-74586, dismissing claimant's hearing request as untimely, subject to claimant's right to renew the request by responding to an appellant questionnaire within 14 days. On January 30, 2017, claimant filed his response to the appellant questionnaire and a timely application for review of Hearing Decision 17-UI-74586. By letter dated February 2, 2017, ALJ Kangas informed claimant that his response to the appellant questionnaire would not be considered because it had not been received within 14 days of the date on which the hearing decision was mailed.

Claimant's submission of his response to the appellant questionnaire with his timely application for review of Hearing Decision 17-UI-74586 is construed as a request for EAB to consider new information under OAR 471-041-0090(2) (October 29, 2006). OAR 471-041-0090(2) states that EAB may consider new information that is not part of a record if the party offering the evidence demonstrates that circumstances beyond the party's reasonable control prevented him from presenting the information at a hearing. The ALJ's refusal to consider claimant's response to the appellant questionnaire was a circumstance beyond his reasonable control. We will therefore consider the information provided in claimant's response to the appellant questionnaire.

**FINDINGS OF FACT:** (1) Claimant's mail is not delivered to his home. He must drive 30 miles to the nearest post office to pick up his mail.

(2) Claimant first learned about the administrative decision when he picked up Hearing Decision 17-UI-74586 at the nearest post office sometime in early January 2017.<sup>1</sup>

**CONCLUSION AND REASONS:** Claimant's late request for hearing must be dismissed.

ORS 657.269 provides that parties have 20 days to request a hearing after the Department issues an administrative decision. ORS 675.875 allows the 20-day deadline to be extended "a reasonable time" upon a showing of "good cause." OAR 471-040-0010 (February 10, 2012) defines "good cause" as factors beyond the party's reasonable control or an "excusable mistake." Decision # 134001 was issued on November 1, 2016; because claimant did not file his hearing request until January 10, 2017, it was late.

Although claimant asserted that he first learned about the decision at issue in early January 2017, he presented no evidence concerning problems he has had in receiving mail or any other issue that might have prevented him from promptly receiving the decision after the Department mailed to him in November 2016. Nor does claimant explain how the 30 mile drive to the post office to pick up his mail delayed his receipt of the November decision. Without these details, we have no reason to conclude that any circumstances beyond claimant's reasonable control or excusable mistake prevented him from timely filing his hearing request. Claimant therefore failed to establish good cause for filing a late request for hearing, and his late hearing request is therefore dismissed.

**DECISION:** Hearing Decision 17-UI-74586 is affirmed.

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

**DATE of Service:** February 7, 2017

**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> In his response to the appellant questionnaire, claimant stated that he received the administrative decision on January 10, 2017, which would not be possible, given that the decision was issued on January 12, 2017. We reasonably infer from this response that he first learned about the decision when he received Hearing Decision 17-UI-74586 in early January 2017.