

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0144**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On September 13, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 133411). On October 3, 2016, decision # 133411 became final without claimant having filed a request for hearing. On January 5, 2017, claimant filed a late request for hearing. On January 10, 2017, ALJ Kangas issued Hearing Decision 17-UI-74445, dismissing claimant's request for hearing subject to his right to renew the request by filing a response to an appellant questionnaire by January 24, 2017. On January 25, 2017, claimant filed a response to the appellant questionnaire, and a timely application for review of Hearing Decision 17-UI-74445 with EAB. On February 2, 2017, ALJ Kangas notified claimant that because his response to the appellant questionnaire was not filed within the designated time period, OAH would not consider the response or issue another order regarding claimant's late request for hearing, and that Hearing Decision 17-UI-74445 remained unaffected.

Claimant's filing of his response to the appellant questionnaire with his application for review is construed as a request for EAB to consider information not received into the hearing record. Under OAR 471-041-0090(1) (October 29, 2016), information offered, but not received into the hearing record, may be received into evidence as necessary to complete the record. Claimant's response to the appellant questionnaire is necessary to complete the record, and EAB therefore considered his response when reaching this decision.

**CONCLUSIONS AND REASONS:** Claimant's request for hearing is dismissed as untimely without a showing of good cause.

Under ORS 657.269, claimant's request for hearing on decision # 133411 was required to be filed by October 3, 2016. It was filed on January 5, 2017 and therefore was late. Under ORS 657.875, the deadline for requesting a hearing may be extended a reasonable time upon a showing of good cause. "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, and includes the failure to receive a document because the Department mailed it to an incorrect address despite having the correct address. OAR 471-040-

0010(1) (February 10, 2012). However, good cause does not include the failure to receive a document due to not notifying the Department of an updated address while the person is claiming benefits, or not understanding the implications of a decision or notice when it is received. *Id.* OAR 471-040-0010(1) (February 10, 2012). "A reasonable time," is seven days after the circumstances that prevented a timely filing ceased to exist. 471-040-0010(3).

In his response to the appellant questionnaire, claimant indicated that he received the administrative decision on January 24, 2017, filed his hearing request on January 25, 2017, and that he did not file his hearing request before the deadline stated in the administrative decision because he moved, and his mail was going to his father's address in California. Claimant's response suggests he was attempting to explain why he did not file the response by the January 24, 2016 deadline set forth in Hearing Decision 17-UI-74445, and not why he filed a late request for hearing on decision # 133411. However, even if we infer claimant did not receive notice of decision # 133411 until after the deadline for filing a request for hearing, absent evidence as to when claimant moved, started having his mail delivered to his father's address in California, and notified the Department that his mailing address had changed, we cannot find that his delay in receiving the decision constituted good cause under OAR 471-040-0010(1). Nor, absent evidence as to when claimant received notice of decision # 133411, can we find that claimant filed his request within a reasonable time.

Claimant's late request for hearing therefore is dismissed.

**DECISION:** Hearing Decision 17-UI-74445 is affirmed.

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

**DATE of Service:** February 9, 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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