

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0324**

*Reversed & Remanded*  
*Late Request for Hearing Allowed*

**PROCEDURAL HISTORY:** On January 26, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision (# 112610) concluding that claimant did not actively search for work from December 25 until December 31, 2016 (week 52-16). Decision # 112610 became final on February 15, 2017, without a request for hearing having been filed. On February 21, 2017, claimant filed an untimely request for hearing. On February 22, 2017, ALJ Kangas issued Hearing Decision 17-UI-77445, 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 March 13, 2017, claimant submitted her response to the appellant questionnaire to the Office of Administrative Hearings (OAH) and filed an application for review of Hearing Decision 17-UI-77445 with the Employment Appeals Board (EAB). By letter dated March 15, 2017, OAH informed claimant that her response to the appellant questionnaire would not be considered because it had been received more than 14 days after the hearing decision was issued.

**EVIDENTIARY MATTER:** With her application for review, claimant included her response to the appellant questionnaire in which she explained why she filed an untimely hearing request. Under OAR 471-041-0090(2), EAB may consider new information which is not part of a hearing record if the party offering the information demonstrates that circumstances beyond the party's control prevented the party from offering the information at a hearing. OAH's refusal to consider claimant's responses to her appellant questionnaire was a circumstance beyond claimant's control. Her request to have EAB consider new information is therefore granted. Claimant's responses to the appellant questionnaire have been marked as EAB Exhibit 1, and a copy of EAB Exhibit 1 is included with this decision. Any party that objects to the admission of EAB Exhibit 1 must submit its objections to this office in writing,

setting forth the basis of the objection, within ten days of the date on which this decision is mailed. Unless such an objection is received, EAB Exhibit 1 will remain part of the record.

**FINDINGS OF FACT:** (1) Claimant received decision # 112610 soon after it was mailed to her. On February 6, 2016, claimant contacted the Department and spoke to a representative about the decision. She told claimant that her claim was “closed” and that claimant could either request a hearing on the denial or reopen her claim; the representative led claimant to believe that she would obtain unemployment benefits more rapidly if she reopened her claim, with an effective date of January 29, 2017. EAB Exhibit 1, p. 3.

(2) On February 16, 2017, claimant called the Department and spoke to a representative, a different representative from the one to whom she had spoken on February 7. This representative reviewed information about claimant’s situation and told claimant it was necessary for her to request a hearing if she wanted to attempt to obtain benefits she had been denied. EAB Exhibit 1, p. 6.

**CONCLUSION AND REASONS:** We disagree with the ALJ and conclude that claimant demonstrated good cause for filing an untimely request for hearing on decision # 112610.

ORS 657.269(2) requires that requests for hearing on administrative decisions be filed within 20 days after it was mailed. The deadline to request a hearing on decision # 112610 was February 15, 2017; because claimant filed her request on February 21, 2017, it was late. ORS 657.875 allows the filing deadline to be extended a “reasonable time” upon a showing of “good cause,” however. OAR 471-040-0010(1) defines “good cause” as “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.

After claimant received the administrative decision at issue, she contacted the Department and on February 7, 2017, spoke to a representative who led her to believe that it she could more rapidly obtain the benefits she had been denied by reopening her claim, rather than requesting a hearing. Only when claimant spoke to different Department representative on February 17, 2017, did claimant understand that she must to file a hearing request on decision # 112610 if she disagreed with the decision and wanted to attempt to obtain benefits she had been denied. Claimant’s failure to timely file a hearing request resulted from her reasonable reliance on the advice of a Department representative, an excusable mistake. *See e.g.*, Appeals Board Decision 12-AB-2744 (October 18, 2012) (an excusable mistake includes mistakes resulting from inadequate notice, reasonable reliance and the inability to follow directions despite substantial efforts to comply).

We also conclude that claimant filed her hearing request within a reasonable time because she filed it six days after she learned about the need to do so. Claimant’s request for hearing is therefore allowed, and she is entitled to a hearing on the merits of decision # 112610.

**DECISION:** Hearing Decision 17-UI-77445 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: March 24, 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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