

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0343**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On January 29, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 105594). On February 9, 2017, decision # 105594 became final, without a request for hearing having been filed. On February 17, 2017, claimant filed an untimely hearing request. On February 22, 2017, ALJ Kangas issued Hearing Decision 17-UI-77472, dismissing claimant's untimely hearing request, subject to claimant's right to renew the request by responding to an appellant questionnaire within 14 days. On March 13, 2017, claimant filed his response to the appellant questionnaire with the Office of Administrative Hearings (OAH) and filed an application for review with the Employment Appeals Board (EAB). By letter dated March 21, 2017, OAH informed claimant that it would not consider his response to the appellant questionnaire because it had not been received within 14 days of the date on which the hearing decision was mailed.

**EVIDENTIARY MATTER:** With his application for review, claimant included a copy of his response to the appellant questionnaire in which he 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 his appellant questionnaire was a circumstance beyond claimant's reasonable control. His request to have EAB consider new information is therefore granted. Claimant's response to the appellant questionnaire has 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.

**CONCLUSION AND REASONS:** This matter is remanded to the OAH a hearing to further develop the record.

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 9, 2017;

because claimant filed his request on February 17, 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.

In EAB Exhibit 1, claimant explained that at the time decision # 105994 was sent to him, he was homeless and did not have a permanent address. Claimant indicated that his mail was and is sent to him “in care of” a friend and not directly to him, and that he did not receive decision # 105994 on February 15, 2017.

Based on claimant’s statements in EAB Exhibit 1, it appears that his failure to timely file his hearing request may have resulted from circumstances beyond his reasonable control or an excusable mistake. Further development of the record at a hearing is necessary to determine whether this is the case, however. On remand, the ALJ should ask what arrangements claimant made to have his friend receive his mail, why he made these arrangements with this particular friend, when he made these arrangements, and when and how he received or learned about the administrative decision. In addition, the ALJ should ask claimant about his living situation in relation to his ability to receive his mail: where claimant was staying or sleeping, how often he checked with his friend about mail he had received, and what, if any reasons, prevented him from regularly obtaining his mail from the friend who received it. The ALJ should ask any other questions necessary to determine if claimant had good cause for failing to file a timely hearing request. If the ALJ determines that claimant has demonstrated good cause for his late hearing request, and filed his request within a reasonable time, the ALJ should then conduct a hearing on the merits of that request.

ORS 657.270 requires the ALJ to give all parties a reasonable opportunity for a fair hearing. That obligation necessarily requires the ALJ to ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the ALJ in a case. ORS 657.270(3); *see Dennis v. Employment Division*, 302 Or 160, 728 P2d 12 (1986). Because the ALJ failed to develop the record necessary for a determination of whether claimant’s late request for hearing should be allowed, Hearing Decision 17-UI-77472 is reversed, and this matter remanded for further development of the record.

**DECISION:** Hearing Decision 17-UI-77472 is set aside, and this matter remanded for further proceedings consistent with this order.

Susan Rossiter and D. P. Hettle;  
J. S. Cromwell, 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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