

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0588**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On March 28, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that the employer discharged claimant for misconduct (decision # 81710). On April 17, 2017, decision # 81710 became final, without a request for hearing having been filed. On April 19, 2017, claimant filed a late request for hearing. On April 24, 2017, ALJ Kangas issued Hearing Decision 17-UI-81652, dismissing claimant's late hearing request, subject to claimant's right to renew the request by responding to an appellant questionnaire within 14 days. On May 10, 2017, claimant filed her 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 May 15, 2017, OAH informed claimant that it would not consider her response to the appellant questionnaire because OAH did not receive it within 14 days of the date on which the hearing decision was mailed.

**EVIDENTIARY MATTER:** With her application for review, claimant included a copy of 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 that 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 response to her appellant questionnaire was a circumstance beyond claimant's reasonable control. Her 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 mailing date for this decision. Unless such an objection is received, EAB Exhibit 1 will remain part of the record.

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

ORS 657.269(2) requires that a request for hearing on an administrative decision be filed within 20 days after it was mailed. The deadline to request a hearing on decision # 81710 was April 17, 2017.

Claimant filed her request for hearing late, on April 19, 2017. 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) 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 # 81710 was sent to her, she was homeless and that it was “problematic” for her to go to the post office “on a daily basis” because her car was “not available.” EAB Exhibit 1. Claimant stated in EAB Exhibit 1 that she went to the post office and received decision # 81710 on April 18, 2017.

Based on claimant’s statements in EAB Exhibit 1, it appears that her failure to file her request for hearing on time may have resulted from circumstances beyond her reasonable control or an excusable mistake. Further development of the record at a hearing is necessary to determine whether this is the case. On remand, the ALJ should ask claimant where she received her mail, and how often she checked her mail. The ALJ should ask claimant questions to determine if she had reasons to believe, for example, based on conversations with the Department, that she would be receiving an administrative decision in the mail, and if yes, when she expected to receive it. Where did claimant stay or sleep during the time the Department mailed the decision # 81710? How far was the post office from where she stayed? What arrangements did claimant make to get her mail? Did she rely on another person to help her get her mail, and if yes, in what manner? How did she communicate with that person? Did she have difficulty arranging to pick up her mail, and if yes, why? Did claimant have a vehicle? What manner of transportation did claimant use to check her mail? When was the last time she checked her mail before April 18, 2017? Does claimant have any impediments (*e.g.* financial problems, transportation issues or disabilities) that affected her ability to recover her mail? The ALJ should ask claimant what, if any, problems claimant encountered in going to check her mail. The ALJ should also ask any other questions necessary to determine if claimant had good cause for failing to file a timely hearing request and whether she filed it within a reasonable time. If the ALJ determines that claimant has demonstrated good cause for her late hearing request, and filed her request within a reasonable time, the ALJ should then conduct a hearing on the merits of decision # 81710.

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-81652 is reversed, and this matter remanded for further development of the record.

**DECISION:** Hearing Decision 17-UI-81652 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:** June 2, 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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