

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0922**

*Affirmed*  
*Late Request for Hearing Denied*

**PROCEDURAL HISTORY:** On March 21, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 111628) concluding that claimant did not actively search for work from February 7 through 13, 2017. On April 10, 2017, decision # 111628 became final without a request for hearing having been filed. On July 5, 2017, claimant filed an untimely request for hearing. On July 10, 2017, ALJ Kangas issued Hearing Decision 17-UI-87573, dismissing claimant's late request for hearing, subject to claimant's right to renew his request by responding to an appellant questionnaire within 14 days. On July 31, 2017, claimant filed an application for review with the Employment Appeals Board (EAB) and also filed his response to the appellant questionnaire with the Office of Administrative Hearings (OAH). By letter dated August 1, 2017, ALJ Kangas notified claimant that his response to the appellant questionnaire would not be considered because it was late, and that Hearing Decision 17-UI-87573 remained undisturbed.

**EVIDENTIARY MATTER:** With his application for review, claimant included a copy of the response he submitted to the appellant questionnaire. 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. 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 objection in writing to EAB within 10 days of the date on which this decision was mailed. If no objection is received, or an objection is received and overruled, EAB Exhibit 1 will remain part of the record.

**CONCLUSION AND REASONS:** Claimant failed to show good cause for his untimely hearing request, and it should be dismissed.

ORS 657.269 provides that the Department's decisions become final unless a party files a request for hearing within 20 days after the date it is mailed. ORS 657.875 provides that the 20-day deadline may be

extended a “reasonable time” upon a showing of “good cause.” OAR 471-040-0010 (February 10, 2012) provides that “good cause” includes factors beyond an applicant’s reasonable control or an excusable mistake, and defines “reasonable time” as seven days after those factor ceased to exist.

Here, the deadline for claimant to file a timely hearing request on decision # 111628 was April 10, 2017. Because claimant did not file his hearing request until July 5, 2017, his request was late. Claimant explained that he did not receive administrative decision # 111628 until June 7, 2017 because his mail was being held due to his divorce, and because he had been working “across the state.” EAB Exhibit 1. We conclude that the hold that was placed on claimant’s mail constituted good cause for extending the 20-day timeline for filing his hearing request. However, although the circumstances that caused claimant’s untimely filing ceased to exist when he received the decision on June 7, he did not file his hearing request until July 5 – almost a month after he received the hearing decision. Claimant therefore did not file his hearing request within a “reasonable time” and his hearing request must be dismissed.

**DECISION:** Hearing Decision 17-UI-87573 is affirmed.

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

**DATE of Service:** August 16, 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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