

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0945**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On March 31, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 92516). On April 20, 2017, decision # 92516 became final without claimant having filed a timely request for hearing. On June 24, 2017, claimant filed a late request for hearing by mail. On July 6, 2017, ALJ Kangas issued Hearing Decision 17-UI-87379, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by July 20, 2017. On July 25, 2017, claimant filed a late response to the appellant questionnaire and a timely application for review of Hearing Decision 17-UI-87379. By letter dated August 7, 2017, ALJ Kangas informed claimant that because his response to the appellant questionnaire was late, the Office of Administrative Hearings (OAH) would not consider it or issue another hearing decision, and that Hearing Decision 17-UI-87379 remained in effect.

**EVIDENTIARY MATTER.** With his application for review, claimant included a copy of his appellant questionnaire which he submitted to OAH after the July 20, 2017 deadline set by ALJ Kangas. 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.

**FINDINGS OF FACT:** (1) Claimant received notice of decision # 92516 on April 28, 2017 - 28 days after the Department mailed it to him on March 31, 2017.

(2) Although claimant received the decision eight days after the April 20 deadline for requesting a hearing on decision # 92516 expired, he did not request a hearing until June 24, 2017, more than eight weeks later. Claimant did not request a hearing until then because “it was hard to give importance to” the administrative decision as it was not sent to him by “certified mail” or “email” and because he was not notified of the decision by phone. EAB Exhibit 1.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant’s late request for hearing on decision # 92516 is subject to dismissal.

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 factors ceased to exist.

In this case, the deadline for claimant to file a timely request for hearing on decision # 92516 expired on April 20, 2017; claimant did not file his request for hearing until more than nine weeks later, on June 24, 2017, making his request late. In his responses to the appellant questionnaire, claimant asserted that he received decision # 92516 on April 28, 2017, eight weeks before he filed his late request for hearing. EAB Exhibit 1. Claimant’s explanation for why he did not file his request for hearing on the decision until June 24, 2017 - was that “it was hard to give importance to” because of the manner in which he was notified. *Id.* However, it was within claimant’s reasonable control to open and read his mail. Because claimant failed to show that his late request for hearing was caused by factors beyond his reasonable control, he failed to establish good cause for the late filing. For that reason, we agree with the ALJ that claimant’s late request for hearing on decision # 92516 must be dismissed.

**DECISION:** Hearing Decision 17-UI-87379 is affirmed.

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

**DATE of Service:** August 17, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.