

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-0967**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On March 24, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision (decision # 112135) concluding that claimant failed to actively search for work from January 15 through February 18, 2017. On April 13, 2017, decision # 112135 became final without a request for hearing having been filed. On July 12, 2017, claimant filed a late request for hearing. On July 17, 2017, ALJ Kangas issued Hearing Decision 17-UI-88128, dismissing claimant's request for hearing as untimely, subject to claimant's right to renew the request by responding to an appellant questionnaire within 14 days. On August 7, 2017, claimant submitted a late response to the appellant questionnaire and a timely application for review of Hearing Decision 17-UI-88128 with the Employment Appeals Board (EAB). By letter dated August 8, 2017, the Office of Administrative Hearings notified claimant that because his response to the appellant questionnaire was not received within 14 days from the date on which Hearing Decision 17-UI-88128 was issued, the response would not be considered and Hearing Decision 17-UI-88128 would remain in effect.

**Evidentiary Matter.** With his application for review, claimant submitted a copy of his response to the appellant questionnaire. Claimant's submission 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:** Although claimant demonstrated good cause for filing a late hearing request, he failed to demonstrate that he filed his hearing request within a reasonable time once the circumstances that prevented his timely filing ceased to exist.

ORS 657.269 requires that parties file a request for hearing within 20 days from the date on which the decision was mailed. In order to be timely, claimant's request for hearing had to be filed no later than April 14, 2017; because it was not filed until July 17, 2017, it was untimely. ORS 657.875 allows that deadline for filing a hearing request to be extended "a reasonable time" if the party also shows "good cause" to extend the deadline. 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.

Claimant explained that he was unable to submit his request for hearing before the deadline because he was out of town, assisting in fire suppression operations in Stillwater, Oklahoma. Claimant therefore demonstrated good cause for extending the deadline for filling his hearing request. However, claimant provided no details about his out of town trip, *e.g.*, when he left and when he returned. Without this information, we have no basis for concluding that he filed his hearing request within a reasonable time once he returned from Oklahoma and the circumstances that prevented a timely filing ceased to exist. Because claimant failed to meet his burden to demonstrate by a preponderance of evidence he filed his hearing request within a reasonable time, his untimely hearing request must be dismissed.

**DECISION:** Hearing Decision 17-UI-88128 is affirmed.

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

**DATE of Service:** August 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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