

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1165**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On July 5, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 104346). On July 25, 2017, decision # 104346 became final without claimant having filed a request for hearing. On August 7, 2017, claimant filed a late request for hearing. On August 10, 2017, ALJ Kangas issued Hearing Decision 17-UI-90101, dismissing claimant request for hearing as untimely, subject to claimant's right to renew the request by filing a response to an appellant questionnaire within 14 days. On August 21, 2017, claimant filed a timely response to the appellant questionnaire with the Office of Administrative Hearings (OAH). On August 29, 2017, OAH issued a letter order vacating Hearing Decision 17-UI-90101, and on September 5, 2017 scheduled a hearing on claimant's late request for hearing and, if appropriate, the merits of decision # 104346, for September 18, 2017. On September 18, 2017, ALJ M. Davis conducted a hearing, and on September 20, 2017 issued Hearing Decision 17-UI-92880, re-dismissing claimant's request for hearing as untimely without good cause. On October 3, 2017, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Sometime before July 11, 2017, claimant received a copy of administrative decision # 104346. On July 11, 2017, claimant contacted the Department for information about the implications of that decision. A Department representative told claimant that the decision denied her benefits based on a work separation. The representative advised claimant she could request a hearing on decision # 194346 if she disagreed with its conclusions. Claimant told the representative that she wanted to speak with her attorney before deciding how she would proceed. The representative told claimant to call back if she decided she wanted to request a hearing because she could do so by phone.

(2) Sometime after July 11, 2017, claimant spoke with her attorney. The attorney recommended that claimant "wait a little bit" before requesting a hearing in order to give her time to gather together any

evidence she wanted to present at a hearing. Audio at ~29:08. Claimant did not notice that the text of decision # 104346 stated that a request for hearing needed to be filed on or before July 25, 2017.

(3) Sometime before August 7, 2017, claimant had collected the evidence she wanted to present at a hearing on decision # 104346. On August 7, 2017, claimant filed a request for hearing on decision # 104346.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing on decision # 104346 is 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 a "reasonable time" as seven days after those factors ceased to exist.

Although claimant received decision # 104346 sometime before July 11, 2017, which allowed her ample time to file a timely request for hearing if she disagreed with the decision, she apparently did not notice that the text of the decision clearly advised her that she needed to file any request for hearing on or before July 25, 2017. In addition, when claimant called the Department on July 11, 2017, the representative with whom she spoke advised her that she needed to file a request for a hearing on decision # 104346 if she disagreed with that decision, and that she could do so by phone. Claimant spoke with her attorney sometime after July 11, 2017, apparently for advice on how to proceed given the unfavorable outcome of decision # 104346, and the attorney suggested claimant take a "little bit" of time to ensure that she collected together her evidence. However, claimant did not suggest that the attorney advised her that she should not request a hearing until she had gathered *all* of the evidence she thought was relevant, told her there were no deadlines with which she needed to comply, or said anything on which she relied that reasonably should have deterred her from filing the request for hearing on or before July 25, 2017, even if she had not, as of that date, gathered together all of the evidence she thought she might want to present.

Because a careful reading of decision # 104346 would have alerted claimant to the need to file a request for hearing by July 25, 2017, and claimant did not apparently receive any information that reasonably suggested that she did not need to comply with the deadline stated in decision # 104346, there were no factors or circumstances beyond claimant's reasonable control that precluded her from the timely filing of a request for hearing. Claimant's failure to carefully read decision # 104346 and learn the date by which she needed to file a request for hearing and her implicit belief that she could successfully request a hearing whenever she had gathered together all of the documents she deemed important for a hearing was a mistake. However, it was not an "excusable" mistake for purposes of showing good cause for a late request for hearing because the mistake did not raise due process issues and was not the result inadequate notice, reasonable reliance on another person, or the inability to follow directions despite substantial efforts to comply. For these reasons, claimant did not show good cause for the late filing of the hearing request, and her request for hearing on decision # 104346 is dismissed.

**DECISION:** Hearing Decision 17-UI-92880 is affirmed. *Decisión de la Audiencia 17-UI-92880 queda confirmada.*

**DATE of Service: November 3, 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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*NOTA: Usted puede apelar esta decisión presentando una solicitud de revisión judicial ante la Corte de Apelaciones de Oregon (Oregon Court of Appeals) dentro de los 30 días siguientes a la fecha de notificación indicada arriba. Ver ORS 657.282. Para obtener formularios e información, puede escribir a la Corte de Apelaciones de Oregon, Sección de Registros (Oregon Court of Appeals/Records Section), 1163 State Street, Salem, Oregon 97310 o visite el sitio web en [courts.oregon.gov](http://courts.oregon.gov). En este sitio web, hay información disponible en español.*

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