

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1414**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On October 3, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant did not willfully misrepresent his work separation from the employer to obtain benefits (decision # 195474). On October 23, 2017, decision # 195474 became final without the employer having filed a request for hearing. On November 16, 2017, the employer filed a late request for hearing. On November 20, 2017, ALJ Kangas issued Hearing Decision 17-UI-97269, dismissing the employer's late request for hearing subject to its right to renew the request by responding to an appellant questionnaire by December 4, 2017. On December 6, 2017, the employer filed a late response to the appellant questionnaire and a timely application for review of Hearing Decision 17-UI-97269 with the Employment Appeals Board (EAB). On December 7, 2017, ALJ Kangas notified the parties that because the employer's response to the appellant questionnaire was late, it would not be considered or another order issued, and Hearing Decision 17-UI-97269 remained in effect.

The employer's filing of its response to the appellant questionnaire with its 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. The employer's response to the appellant questionnaire is necessary to complete the record, and EAB therefore considered its response when reaching this decision. The employer'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.

**CONCLUSIONS AND REASONS:** The employer's late request for hearing on decision # 195474 is dismissed as untimely without a showing of good cause.

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.

To be timely, the employer’s request for hearing on decision # 195474 had to be filed by October 23, 2017. It was filed 24 days late on November 16, 2017. In its response to the appellant questionnaire, the employer stated that it failed to file a timely request for hearing because its human resources generalist did not receive decision # 195474 in her office “timely causing a delay,” and that, “There was a delay in mail being delivered to the correct department in HR causing a delay in response time. Received after appeal date.” EAB Exhibit 1. The employer’s statements show that its delay in filing its request for hearing likely resulted from its own failure to forward decision # 195474 to its human resources generalist in a timely manner, and not due to factors beyond its reasonable control. Nor is the employer’s mistake in processing its mail excusable because it does not, for example, raise a due process issue or result from inadequate notice, reasonable reliance on another, or the inability to follow direction despite substantial efforts to comply.

The employer’s late request for hearing on decision # 195474 therefore is dismissed as untimely without a showing of good cause.

**DECISION:** Hearing Decision 17-UI-97269 is affirmed.

J. S. Cromwell and D. P. Hettle.

**DATE of Service:** December 19, 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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