

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1483**

*Affirmed*  
*Late Request for Hearing Dismissed*

**PROCEDURAL HISTORY:** On November 3, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision disqualifying claimant from 52 weeks of future benefits (decision # 194266). On November 27, 2017, that decision became final without claimant having filed a timely request for hearing. On November 28, 2017, claimant filed a late request for hearing. On December 5, 2017, ALJ Kangas issued Hearing Decision 17-UI-98197, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by December 19, 2017. On December 23, 2017, claimant filed a late response to the appellant questionnaire and an application for review with the Employment Appeals Board (EAB). On December 27, 2017, ALJ Kangas mailed claimant a letter stating that his response to the appellant question was late and, therefore, would not be considered by the ALJ.

With his application for review, claimant submitted a one-page letter responding to the appellant questionnaire. 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 information included in the questionnaire is relevant and material to EAB's determination, necessary to complete the record, and, therefore, admitted into the record as EAB Exhibit 1. Any party that objects to our doing so must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. Unless such objection is received and sustained, the information will remain in the record at EAB Exhibit 1.

**FINDINGS OF FACT:** Claimant intended to file a timely request for hearing but before he did so went out of state for his father's mortuary service, without access to email or the documents, between November 22<sup>nd</sup> and November 28<sup>th</sup>. On November 28<sup>th</sup> he filed his request for hearing one day late.

**CONCLUSIONS AND REASONS:** Claimant's late request for hearing is dismissed.

ORS 657.269 provides that parties have 20 days to request a hearing on an administrative decision. 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 states, in pertinent part, that “good cause” is an excusable mistake or factors beyond an applicant’s reasonable control, and a “reasonable time” is seven days after the circumstances that prevented a timely filing ceased to exist.

Claimant filed his request for hearing one day late and failed to establish good cause for the late filing. It appears from EAB Exhibit 1 that claimant was aware of the need to request a hearing and intended to do so, and despite the difficult circumstances and having to be out of state for the last week of the 20-day appeal period, he did not establish that it was beyond his reasonable control to file a timely request for hearing before leaving the state for his father’s services or calling the Department while out of state to request a hearing by phone, despite his lack of access to email and documents. Likewise, although it was arguably a “mistake” for claimant not to have filed a timely request for hearing, the mistake is not “excusable” because it did 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. Claimant therefore has not shown good cause to extend the filing period in this matter, and his late request for hearing must be dismissed. Decision # 194266 remains undisturbed.

**DECISION:** Hearing Decision 17-UI-98197 is affirmed.

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

**DATE of Service: December 29, 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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