

**EMPLOYMENT APPEALS BOARD DECISION**  
**2017-EAB-1498**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On November 16, 2017, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant was not available for work from July 9, 2017 to October 21, 2017 (decision # 82806). On December 6, 2017, decision # 82806 became final without claimant having filed a timely request for hearing. On December 7, 2017, claimant filed a late request for hearing. On December 11, 2017, ALJ Kangas reviewed claimant's request and issued Hearing Decision 17-UI-98743, dismissing claimant's late request for hearing subject to her right to renew the request by responding to an appellant questionnaire by December 25, 2017. On December 26, 2017, claimant filed her response and a timely application for review with the Employment Appeals Board (EAB). On December 26, 2017, ALJ Kangas issued a letter to claimant stating that because her appellant questionnaire response was received one day after the deadline, OAH "will not be considering that information nor will we issue another order regarding this matter."

**CONCLUSIONS AND REASONS:** Hearing Decision 17-UI-98743 and ALJ Kangas' December 26, 2017 letter are set aside and this matter remanded for a hearing on the issue of whether or not claimant had good cause to file a late request for hearing on decision # 82806.

There is no factual dispute in this case that the deadline for claimant to respond to the appellant questionnaire was December 25, 2017, nor is there any factual dispute that claimant actually responded to the questionnaire on December 26, 2017, one day late. Nevertheless, the ALJ erred in refusing to consider claimant's response. December 25, 2017 was a holiday, as that term is defined in state law, and ORS 187.010(3) provides that any act that is required to be performed on a holiday may be performed on the next succeeding business day "and no liability or loss of rights of any kind shall result from such delay." In other words, claimant may not be penalized for failing to file her appellant questionnaire response on a state holiday. This matter is, therefore, reversed and remanded to the Office of Administrative Hearings (OAH) for a hearing on whether or not claimant had good cause to file her request for hearing on decision # 82806 one day late.

**DECISION:** Hearing Decision 17-UI-98743 is set aside, and this matter remanded for further proceedings consistent with this order.

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

**DATE of Service: January 3, 2018**

**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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