

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0548**

*Reversed & Remanded*

**PROCEDURAL HISTORY:** On January 31, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 122645). On February 20, 2018, decision # 122645 became final without claimant having filed a timely request for hearing. On April 30, 2018, claimant filed a late request for hearing by telephone. On May 3, 2018, ALJ Kangas issued Order No. 18-UI-108641, dismissing claimant's late request for hearing subject to his right to renew the request by responding to an appellant questionnaire by May 17, 2018. On May 21, 2018, claimant responded to the questionnaire and filed a timely application for review with the Employment Appeals Board (EAB). On May 29, 2018, the Office of Administrative Hearings (OAH) mailed a letter stating that claimant's questionnaire response would not be considered.

**CONCLUSIONS AND REASONS:** Order No. 18-UI-108641 is set aside and this matter remanded.

ORS 657.269 provides parties 20 days from the date an administrative decision was mailed to file a timely request for hearing. Claimant filed his request for hearing over two months late. ORS 657.875 provides that the 20-day time period may be extended "a reasonable time" upon a showing of "good cause." OAR 471-040-0010 defines "a reasonable time" as seven days, and "good cause" as an excusable mistake or circumstances beyond the party's reasonable control.

With his application for review, claimant submitted a completed appellant questionnaire that was not admitted into evidence by the ALJ. EAB may consider new information that is not part of the record if the information is relevant and material to EAB's determination and the party offering the information demonstrates that circumstances beyond the party's reasonable control prevented it from offering the information at the hearing. OAR 471-040-0090 (October 29, 2006). The questionnaire claimant submitted was relevant and material to whether or not he had good cause to extend the filing period in this case and filed the late request within a reasonable time after the circumstances that prevented a timely filing ceased to exist. The ALJ's refusal to admit the information into evidence and consider the additional information appears to have been a circumstance beyond claimant's control that prevented the information from being made part of the hearing record. Claimant's completed appellant questionnaire is therefore admitted into evidence as EAB Exhibit 1.

Claimant's completed questionnaire indicates that he might have been discharged for being arrested, might not have received notice of decision # 122645 when it was mailed to him, and might not have been claiming benefits at the time the decision was issued, suggesting that claimant might have had good cause for filing a late request for hearing in this case. In order to determine whether or not that is the case, however, and whether or not claimant's April 30<sup>th</sup> late request for hearing was filed within the 7-day reasonable time period after the circumstances that prevented a timely filing ceased to exist, this matter must be remanded for a hearing at which an ALJ can develop a complete record about the circumstances surrounding claimant's late request for hearing, and, if the ALJ determines that claimant is entitled to a hearing on the merits of decision # 122645, a hearing about claimant's work separation.

**DECISION:** Order No. 18-UI-108641 is set aside, and this matter remanded for further proceedings consistent with this order.<sup>1</sup>

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

**DATE of Service: June 5, 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.

**Please help us improve our service by completing an online customer service survey.** To complete the survey, please go to <https://www.surveymonkey.com/s/5WQXNJH>. If you are unable to complete the survey online and wish to have a paper copy of the survey, please contact our office.

---

<sup>1</sup> **NOTE:** The failure of any party to appear at the hearing on remand will not reinstate Order No. 18-UI-108641 or return this matter to EAB. Only a timely application for review of the subsequent Order will cause this matter to return to EAB.