

EMPLOYMENT APPEALS BOARD DECISION

14-AB-0007

Application for Review Dismissed

PROCEDURAL HISTORY: On February 26, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 130211). Claimant filed a timely request for hearing. On March 20, 2014, the Office of Administrative Hearings (OAH) issued notice of a hearing scheduled for April 2, 2013 at 1:30 p.m. On April 1, 2013, claimant filed a request to withdraw his request for hearing.¹ On April 2, 2013, ALJ Stetz-Waters issued Hearing Decision 13-UIB-06124-D, dismissing claimant's request for hearing and allowing the request to withdraw. On April 22, 2013, Hearing Decision 13-UIB-06124-D became final without an application for review having been filed. On March 7, 2014, claimant filed an application for review with the Oregon Employment Appeals Board (EAB).

CONCLUSIONS AND REASONS: Claimant did not establish good cause to file an untimely application for review, and his application for review should be dismissed.

ORS 657.270(4) required claimant's application for review to be filed no later than April 22, 2013; it was filed on March 7, 2014, as shown by the postmark date affixed to the envelope in which it was mailed. OAR 471-041-0065(1)(b) (October 29, 2006) (if mailed, the filing date is the postmark date on the envelope in which the application for review was mailed). OAR 471-041-0070(3) requires that individuals filing late applications for review include with the late application "a written statement describing the circumstances that prevented a timely filing." With his application for review, claimant included a statement explaining that "[a]n appeal hearing was scheduled for me on April 2, 2013, which I had to decline participation in because I was involved in litigation with the employer and their attorney was to be present at the hearing. Claimant asserts that the employer "since settled with me out of court" and asks for another opportunity to "appeal my case." Claimant failed to explain why his involvement in litigation with the employer prevented him from timely filing his application for review.

¹ On April 2, 2013, claimant contacted OAH and asked that his hearing be postponed because of a pending lawsuit he had filed against the employer. The request for a postponement was denied, and claimant then withdrew his hearing request.

EAB Decision

Because the application for review was filed after the 20-day deadline provided by ORS 657.270(4), and good cause to extend the time allowed has not been shown, the application for review must be dismissed.

DECISION: The application for review filed March 7, 2014 is dismissed. Hearing Decision 13-UIB-06124-D remains undisturbed.

Susan Rossiter, Tony Corcoran and J.S. Cromwell, *pro tempore*;
D.E. Larson, not participating.

DATE of Service: May 5, 2014

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 website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

Note: the above link may be broken due to unannounced changes to the Court of Appeals website, in which case you may contact the Appellate Records at (503) 986-5555.