

EMPLOYMENT APPEALS BOARD DECISION
2014-EAB-0167

Application for Review Dismissed

PROCEDURAL HISTORY: On October 23, 2013, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant but not for misconduct (decision # 94513). The employer filed a timely request for hearing. On January 2, 2014, ALJ McGorin conducted a hearing, and on January 7, 2014, issued Hearing Decision 14-UI-07957, affirming the Department's decision. On January 27, 2014, Hearing Decision 14-UI-07957 became final without an application for review having been filed. On January 28, 2014, the employer filed by facsimile an application for review with the Employment Appeals Board (EAB).

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

ORS 657.270(4) required the employer's application for review to be filed no later than 5:00 p.m., Pacific Standard Time on January 27, 2014; it was filed on January 28, 2014, as shown by the receipt date stamped on the document. OAR 471-041-0065(1)(c) (October 29, 2006) (faxed documents received after 5:00 p.m. are marked as received the following business day; the filing date of applications for review filed by facsimile is the receipt date stamped or written on the facsimile transmission by the public employee who received the document). 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." The employer provided a written statement disagreeing with the Office of Administrative Hearings (OAH) decision but failed to provide any explanation as to why it filed its application one day after the filing deadline expired.

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 January 28, 2014 is dismissed. Hearing Decision 14-UI-07957 remains undisturbed.

DATE of Service: January 31, 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.