

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0839

Application for Review Dismissed

PROCEDURAL HISTORY: On March 17, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision denying claimant's request to backdate a claim. (decision # 90937). Claimant filed a timely request for hearing. On April 23, 2014, ALJ Kirkwood conducted a hearing, and on April 24, 2014 issued Hearing Decision 14-UI-15882, affirming the Department's decision. On May 14, 2014, Hearing Decision 14-UI-15882 became final without an application for review having been filed. On May 15, 2014, claimant filed by facsimile a late application for review with the Employment Appeals Board (EAB).

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

ORS 657.270(4) required the claimant's application for review to be filed no later than May 14, 2014; it was filed on May 15, 2014, as shown by the fax transmission date and the receipt date stamped on the application for review. OAR 471-041-0065(1)(c) (October 29, 2006) (if faxed, the filing date is the receipt date stamped or written on the fax transmission by the public employee who receives 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."

In her written argument to the EAB, claimant asserted she attempted to fax her application for review on May 14, 2014, but the EAB fax machine was "not receiving." However, claimant provided no fax transmittal report or other evidence of her attempt to fax the application for review on May 14, 2014. Claimant's bare assertion without supporting evidence does not provide good cause to extend the time allowed to file her application for review.

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 May 15, 2014 is dismissed. Hearing Decision 14-UI-15882 remains undisturbed.

Susan Rossiter and Tony Corcoran;
D. E. Larson, not participating.

DATE of Service: May 19, 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.